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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 575.

JULES W. ARNDSTEIN, APPELLANT,

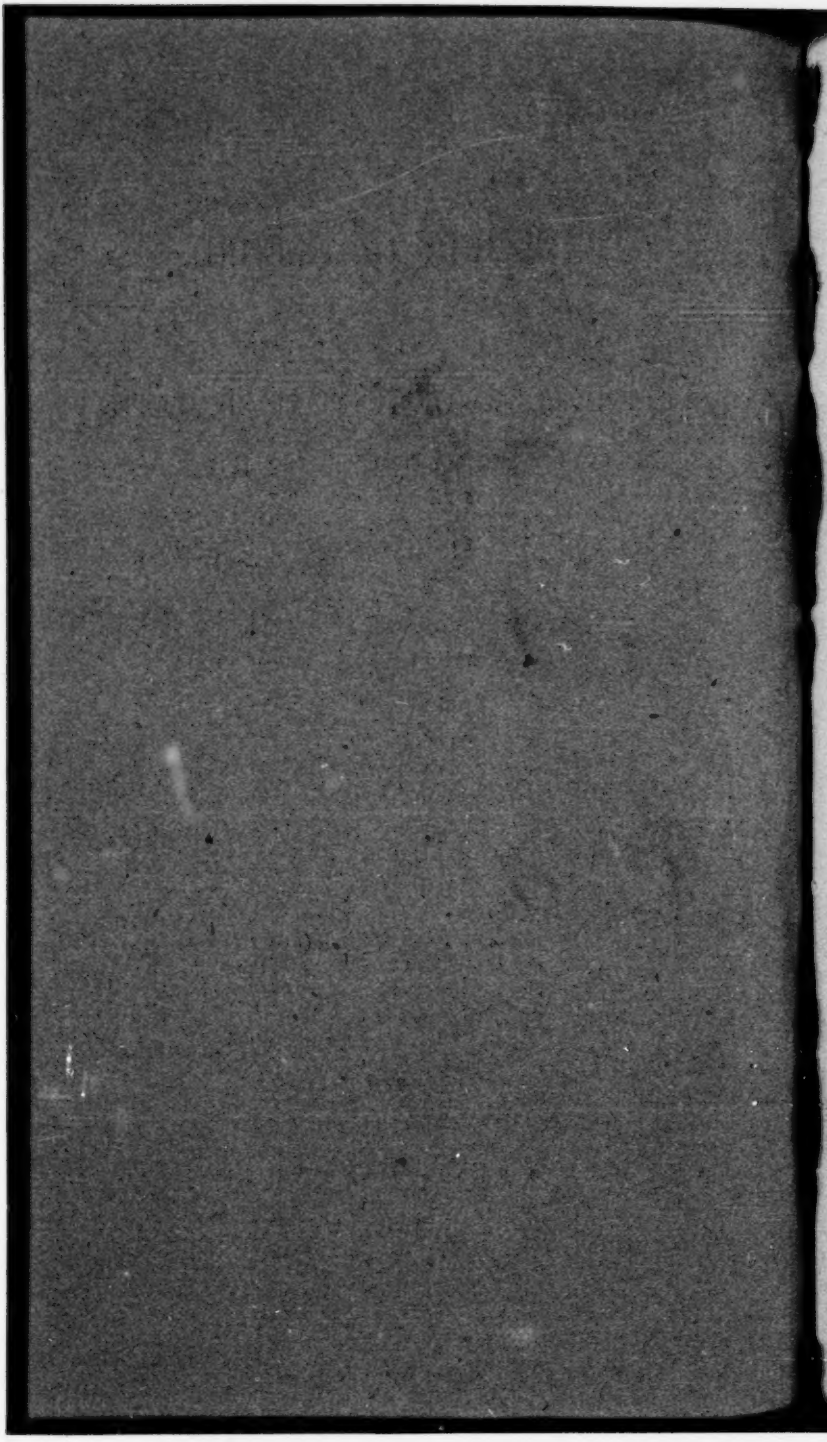
vs.

THOMAS D. McCARTHY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 6, 1930.

(27,993)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1920.

1 & 2 District Court of the United States for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

To the Judges of the District Court of the United States for the Southern District of New York:

The petition of Jules W. Arndstein respectfully shows:

First. That your petitioner is a citizen of the United States and of the State of New York and is a resident of the City of New York in said State.

Second. That your petitioner is now unlawfully and without due process of law and in violation of his rights under the Federal Constitution imprisoned and restrained of his liberty in the Southern District of New York by Thomas D. McCarthy, United States Marshal for the Southern District of New York.

Third. Your petitioner is held by said United States Marshal, solely under the virtue of an order heretofore made by the District Court of the United States for the Southern District on the 15th day of September, 1920, committing your petitioner to the custody of said United States Marshal for an alleged contempt in refusing to answer certain questions propounded to him before and in the presence of Alexander Gilchrist, Jr., a United States Commissioner for the Southern District of New York, sitting in the Southern District of the State of New York by the attorney for the trustee in bankruptcy in the matter of Nicholas Arndstein, bankrupt;

3 that your petitioner is restrained of his liberty only under and by virtue of said order of commitment and not for any other cause or reason; that your petitioner's refusal to answer the questions asked him in said bankruptcy proceedings grew out of the facts and circumstances hereinafter set forth.

Fifth. On February 20th, 1920, the National Surety Company filed a petition for involuntary bankruptcy against your petitioner, a copy of which petition is here*by* annexed, and marked "Exhibit A;" that on the 20th day of February, 1920, a subpœna in bankruptcy was issued returnable February 27th, 1920; that on the 25th day of February, 1920, said subpœna was served by delivery to Sylvia Roma, a maid employed by Fanny Brice Arndstein, your petitioner's wife; that on the 4th day of March, 1920, an adjudication of bankruptcy was entered by default and an order of reference in said matter entered referring same to Seaman Miller, a copy of which adjudication of bankruptcy, and order of reference is hereto annexed and marked "Exhibit B;" that on the 18th day of May, 1920, an order for the examination of your petitioner under section 21-*a* of the Bankruptcy Act was served and filed upon said peti-

tioner; that thereafter and on various dates your petitioner was examined under section 21-*a* and refused to answer certain questions propounded him by the attorney for the trustee upon the ground that said questions would tend to degrade or incriminate your petitioner; that thereafter and on the first day of June, 1920, an order to show cause to punish your petitioner for contempt was signed by Augustus N. Hand, United States District Judge, and thereafter served upon your petitioner; a copy of said order to show cause and the affidavits upon which same were based is hereto annexed and marked "Exhibit C;" that thereafter and on the 10th day of June, 1920, pursuant to an order of this Court and under the direction of the said Court schedules were filed by your petitioner, a copy of which
4 schedules is hereto annexed and marked "Exhibit D;" that thereafter and on the 29th day of June, 1920, a decision was rendered by said Augustus N. Hand holding that your petitioner should not be punished for contempt and that your petitioner was privileged in refusing to answer said questions under the Constitution of the United States, a copy of which opinion is hereto annexed and marked "Exhibit E;" that thereafter and on the 30th day of June, 1920, a motion was heard by Justice Hon. Augustus A. Hand as to whether the bankrupt should be required to testify about his schedules and whether the bankrupt should not be required to turn over the proceeds of the securities set forth in the motion papers herein; that thereafter and on August 10th, 1920, a decision was handed down by Justice Hand, directing your petitioner to answer certain questions by reason of the fact that your petitioner had filed the schedules as ordered and directed by said Court, a copy of which opinion is hereby annexed and marked "Exhibit F;" that thereafter on the 7th day of September, 1920, an order was entered in the clerk's office for the Southern District of New York, directing your petitioner to make answer to certain interrogatories, a copy of which order is hereby annexed and marked "Exhibit H;" that thereafter and on the 14th day of September, 1920, your petitioner appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance to the subpœna served upon your petitioner under section 21-*a* of the Bankruptcy Act and upon being asked the questions contained in schedule C under said order refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner, and thereupon your petitioner was directed by said Commissioner to answer said questions and then again your petitioner refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner; that thereafter upon the 15th day of Sep-
5 tember, 1920, an order was entered by Circuit Judge Martin T. Manton, sitting as a District Judge for the Southern District of New York committing your petitioner to the custody of Thomas D. McCarthy as Marshal for the Southern District of New York for his refusal to answer the questions directed to be answered by the Commissioner upon the hearing had under section 21-*a* of the Bankruptcy Act, a copy of which order is hereto annexed and marked Exhibit "I;" that under said order your petitioner was taken into

custody by the said Marshal and restrained of his liberty and is now in the custody and control of said Marshal by virtue thereof.

That on the — day of February, 1920, three indictments were found against your petitioner by the Grand Jury of New York County, copies of which indictments are hereto annexed and marked Exhibits "J," "K," and "L." That your petitioner is informed and believes that the bonds mentioned in said indictments are the same bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of your petitioner. That your petitioner is also informed and believes that certain proceedings have been taken before the United States Grand Jury for the District of Columbia, and that your petitioner is about to be indicted by the Federal Grand Jury, as your petitioner is informed and believes, being the bonds on account of which the National Surety Company, the petitioning creditor in the Bankruptcy proceedings, claims to be a creditor of your petitioner.

That under the facts hereinbefore set out by your petitioner and from the face of said petition the Court was without jurisdiction to adjudge your petitioner a bankrupt; that your petitioner was not guilty of contempt in refusing to answer the questions asked him by said United States Commissioner in said bankruptcy proceeding and that the District Court had no jurisdiction or power to ad-
6 judge your petitioner guilty of contempt, and said order of committment is null and void, and the arrest and detention of your petitioner is without due process of law and in violation of his Constitutional rights.

Wherefore, your deponent prays that a writ of habeas corpus shall be directed to said Thomas D. McCarthy, Marshal of the United States, and to each and all of his deputies, requiring him and them to bring and have your petitioner before this Court at a time to be determined by this Court together with the true cause of the detention of your petitioner to the end that due inquiry may be had in the premises and your petitioner will ever pray, etc.

Dated New York, New York, September 15th, 1920.

JULES W. ARNDSTEIN,
Petitioner.

FALLON & McGEE,
Attorneys for Petitioner,
149 *Broadway, Borough of Manhattan,*
New York City.

7 UNITED STATES OF AMERICA,
Southern District of New York:

STATE OF NEW YORK,
County of New York, ss:

Jules W. Arndstein, being duly sworn, deposes and says: That he is the person whose name is subscribed to the foregoing petition for a writ of habeas corpus; that he has read the said petition and knows the contents thereof; that the same is true to his own knowledge, ex-

cept as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. That no previous application for the writ of habeas corpus has been made.

JULES ARNDSTEIN.

Subscribed and sworn to before me this 15th day of September, 1920.

ALEX GILCHRIST,
Notary Public, Rockland & N. York Cos.

8 District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, alias J. W. ARNOLD, alias James Wilfred Adair, alias James Wilford Adair, alias James W. or J. W. Ames, alias McCormick, alias Borach, alias Brice, Alleged Bankrupt.

Petition for Involuntary Bankruptcy.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of the National Surety Company, respectfully shows upon information and belief:

I. Said Nicholas Arnstein for the greater portion of the six months next immediately preceding the date of the filing of this petition has had his principal place for the transaction of business at No. 1 West 83rd Street and No. 167 West 72nd Street, in the Borough of Manhattan in the City of New York, and has resided in said district, during said period and is neither a wage earner nor a person engaged principally in farming or the tillage of the soil nor is he a municipal, railroad, insurance or banking corporation, but is by occupation an alleged broker.

II. Said alleged bankrupt is insolvent and owes debts to the amount of more than One Thousand Dollars.

III. Your petitioner is a creditor of said alleged bankrupt and has a provable claim against him amounting in the aggregate in
9 excess of securities held by him to the sum of upwards of $500 and your petitioner is not entitled to priority on his said claim within the meaning of the Bankruptcy Act of 1898 nor has your petitioner received a preference within the meaning of said Act.

IV. The nature and amount of your petitioner's claim is as follows: various customers of your petitioner, consisting of Members of the New York Stock Exchange, investment houses, and banking institutions, have been bonded by your petitioner by what are commonly known as Blanket Bonds. These bonds are intended to insure such persons against loss by theft, etc. Large sums of money

have recently been lost to such persons by theft, etc., by the alleged bankrupt, and your petitioner has, in all instances where demand has been made upon your petitioner, reimbursed such persons for such losses. Such persons thereupon duly assigned, transferred and set over to your petitioner all claims and demands of every nature, kind and description against the persons who stole such property and against any and all persons who have come into possession of such property, which said reimbursement and indebtedness to your petitioner exceeds the sum of $500.

V. The said . ..ged Bankrupt is a notorious criminal with a well-known criminal record, not only in the United States but in England. His assets consist of many thousands of dollars, the proceeds of such stolen property as aforesaid, and his liabilities are in excess of these assets, but the exact amount of such liabilites are at the present time unknown to your petitioner.

VI. Within four months next immediately preceding the date of the filing of this petition, the said Alleged Bankrupt was and
10 still is insolvent and while so insolvent committed acts of bankruptcy in that within the said period of four months he made payments and transfers of assets, to various persons with intent to defraud his creditors, as follows: He deposited the sum of $16,000 or caused the same to be deposited, with the Pacific Bank of New York City under the name of J. W. Arnold and this sum of $16,000 was the specific moneys, the proceeds of such stolen property as aforesaid. He likewise transferred large sums of money to one Nick Cohen and to his wife and to others, all with to hinder, delay and defraud his creditors, and all within the period of four months aforesaid.

VII. The creditors of the said Alleged Bankrupt are less than twelve in number.

Wherefore your petitioner prays that service of this petition with a subpœna may be made upon the said Alleged Bankrupt as provided by the Bankruptcy Act and that he may be adjudged a bankrupt within the purview of the said Act.

Dated, February 19th, 1920.

NATIONAL SURETY COMPANY,
By WM. H. THOMPSON,
Vice Pres.

10½ UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

William A. Thompson, being duly sworn deposes and says that he is one of the Vice Presidents of the National Surety Company; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

Deponent further says that he makes this verification because petitioner is a domestic corporation and deponent is one of its officers, to wit, a Vice President. WM. A. THOMPSON.

Sworn to before me this 19th day of February, 1920.
[SEAL.] H. E. EMMETT,
Notary Public.

(Stamp.)

Endorsed: By Augustus N. Hand, D. J. Filed Feb. 19th, 1920. 5-35. Court file stamp. Filed Feb. 20, 1920. 3.20 p. m.

11 In the District Court of the United States, for the Southern District of New York.

In Bankruptcy.

In the Matter of NICHOLAS ARNSTEIN, alias J. W. ARNOLD, alias JAMES WILFRED ADAM, etc., Bankrupt.

At New York City, in said District, on the 4th day of March A. D. 1920, before the Honorable Learned Hand, Judge of the said Court in Bankruptcy, the petition of National Surety Company that Nicholas Anstein be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and bankrupt having been served and default in pleading, the said Nicholas Arnstein, alias J. W. Arnold, alias James Wilfred Adam, alias James Wilford Adam, alias James W. or J. W. Ames, alias McCounck, alias Brach, alias Brice is hereby declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Leaman Miller one of the referees in bankruptcy of this Court, to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the 9th day of March, 1920, at 10 o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to his said bankruptcy.

Witness, the Honorable Learned Hand, Judge of the said Court, and the seal thereof, at The City of New York, in said District, on the 4th day of March A. D. 1920.

LEARNED HAND,
District Judge.

ALEX. GILCHRIST, JR., *Clerk.*

A True Copy.

[SEAL.] ALEX GILCHRIST, JR., *Clerk.*

[Endorsed:] No. 27524. United States District Court, Southern District of New York. In Bankruptcy. In the matter of Nicholas Arnstein, Bankrupt. Adjudication of Bankruptcy and Order of Reference. U. S. District Court, S. D. of N. Y. Filed Mar. 4, 1920. 3.30 P. M. Saul S. Myers, 60 Wall St.

12 District Court of the United States for the Southern District of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order to Show Cause to Punish for Contempt.

On reading and filing the annexed affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1, 1920, and

On reading the following papers on file herein in the Office of the Clerk of this Court, to wit, the petition for the involuntary bankruptcy of the said Arnstein, the order adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sec. 21 A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners.

And on motion of Saul S. Myers, attorney for the said Trustee.

I do hereby order the said Arnstein to show cause at a State Term of this Court for the hearing of litigated motions in bankruptcy, to be held at the United States Court and Post Office Building in the Borough of Manhattan, in the City of New York, on June 7, 1920, at the opening of court on that day or as soon thereafter as counsel can be heard why the following relief should not be granted herein, to wit:

13 (*a*) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions put to him on such examination before Alexander Gilchrist, Jr., Esq., and William Tallman, Esq., Special Commissioners, which the said Commissioners directed the Bankrupt to answer and which he refused to answer, which questions are set forth in Schedule A of the said annexed affidavit of the said Saul S. Myers.

(*b*) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions which the said Commissioners asked him on such examinations, which questions are set forth in Schedule B of the said annexed affidavit of the said Saul S. Myers.

(*c*) Why the said Arnstein should not be punished for contempt of court for his refusal to answer questions put to him by counsel for the said Trustee, which the said Arnstein refused to answer on the ground that the answers might tend to incriminate or degrade

him, which questions are set forth in Schedule C of the said annexed affidavit of the said Saul S. Myers.

(*d*) Why the said Commissioners should not be instructed to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on the ground that the answers might tend to incriminate him, which objections the said Commissioners sustained to which exception was taken by the said Trustee, which questions are set forth in Schedule D of the said annexed affidavit of the said Saul S. Myers.

14 (*e*) Why the said Commissioners should not be instructed to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on the ground that the answers might tend to incriminate him, which objections the Commissioners sustained and refused to instruct the witness to answer to which ruling and refusal the said Trustee excepted, which questions are set forth in Schedule E of the said annexed affidavit of the said Saul S. Myers.

(*f*) Why the said Arnstein should not be required to forthwith turn over to the said Trustee the securities more fully set forth in the annexed affidavit of the said Saul S. Myers, which securities Joseph Gluck testified before the said Commissioners he delivered to the said Arnstein and to one Nick Cohn, which securities it is claimed belong to the said Trustee, and why the said Arnstein should not be directed to turn over to the said Trustee the sum of Five hundred dollars ($500) which he testified before the said Commissioners he received from his wife on or about February 12th, 1920, and for the disposition of which he has failed to account and why upon his failure to turn over such securities and the said sum of Five hundred dollars ($500) he should not be punished for contempt of court.

(*g*) Why the said Arnstein should not be punished for contempt of court for failure to file schedules of his assets and liabilities herein.

Why such other and further relief should not be granted as to the Court may seem proper.

15 I do further order that this order to show cause and the annexed papers may be served on or before June 3, 1920, and that such service be sufficient, and that any answering affidavits must be filed and served on the attorney for the said Trustee on or before June 4, 1920, and

I do further order that the said Arnstein forthwith deliver to the said Trustee all property, assets and effects of whatsoever nature and wheresoever located, including accounts, notes and bills receivable, drafts, checks, moneys, certificates of stock, bonds, securities and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in his possession or under his control, and I do hereby enjoin and restrain the said Arnstein from disposing of or interfering with any of the prop-

erty of the estate herein. Dated at the Post Office Building, in the Borough of Manhattan, in the City of New York, June 1st, 1920.

AUGUSTUS N. HAND,
U. S. D. J.

16 District Court of the United States, Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Saul S. Meyers.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Saul S. Myers, being duly sworn, deposes and says:

1. I am the attorney in this proceeding for Hon. Henry A. Gildersleeve, Trustee in Bankruptcy herein. I also represent the American Surety Company, the National Surety Company, the Lloyds of England and other creditors herein.

2. I have been conducting certain examinations herein under Sect. 21-A of the Bankruptcy Act and among the various witnesses examined was one Joseph Gluck. Gluck was examined on several different days. He was recalled on the afternoon of April 30th last and was shown a list of securities which the various surety companies and Stock Exchange Houses claim had been lost. Gluck examined the list and gave a detailed account of the securities which came into his possession and gave the name of the persons to whom he gave those securities.

3. Gluck testified that the following is a true and correct list of the securities which, according to the best of his recol-
17 lection, he had given to the Bankrupt and to Nick Cohen at one and the same time.

Stocks.

No. of shares.	Name.
100	American Beet Sugar.

The testimony of Joseph Gluck on that point is as follows:

"A. I turned that over to Nick Cohen. Nick Arnstein was there at the time.

* * * * * * *

Q. No one was present except Cohen and Arnstein?
A. No, sir.

Q. At no time; is that right?
A. That is right.

* * * * * * *

Q. * * * Now, the 100 American Beet Sugar you give it to Nick Cohen?
A. Yes, sir, Cohen and Arnstein.

No. of shares.	Name.
100	American Car Foundry.

The testimony of Joseph Gluck on that point is as follows:

Q. Now, take up No. 4?
A. American Car Foundry.
Q. How many?
A. 100 shares * * * That was given to Nick Cohen
Q. All right; who else was present?
A. Nick Arnstein.
Q. Let me ask you here, was Nick Arnstein present every time?
A. Every time I turned over certificates.
Q. You have identified these parties from their photographs in this court, have you?
A. Positively; yes, sir."

100	American Smelting & Refining Preferred.
18	
100	American Smelting & Refining Common.

The testimony of Joseph Gluck on this point is as follows:

"Q. No. 12?
A. American Smelting & Refining.
Q. How many?
A. 100 shares of common and 100 shares preferred. * * * These went to Nick Cohen in the presence of Nick Arnstein.

* * * * * * *

Q. You gave those to Nick Cohen and Nick Arnstein?
A. Yes, sir.

No. of shares.	Name.
500	Atlantic, Gulf & West Indies.

The testimony of Joseph Gluck on that point is as follows:

"A. They were given to Nick Cohen in around the month of October.

Q. Where?

A. In Pennsylvania Station.

Q. New York?

A. New York.

Q. Thirty-third Street?

A. 33rd Street.

Q. Who else was present?

—. Nick Arnstein, in the state room.

Q. Arnstein was always present?

A. Always present.

Q. He always saw you hand over those certificates to Nick Cohen?

A. Yes, sir.

Q. But you never handed them personally to Arnstein?

A. Let me get this straight. I handed them over to him, (Arnstein) and then he put them in the grip, see?

* * * * * * *

Q. This was in New York City?

A. This was in New York City; Pennsylvania Station.

Q. Can you give us the date?

19 A. October 16th, I think. That was the first trip to Washington—or October 13th.

Q. What time?

A. 12 o'clock; 12:15 a. m. train.

Q. That would be 12:15 a. m. on the 14th?

A. Yes, sir.

Q. Past midnight?

A. Yes, sir.

Q. Now, you may say that those were the only three persons present: You, Nick Cohen and Nick Arnstein; is that right?

A. Yes, sir.

Q. And Nick Arnstein actually had those 500 shares in his hand; is that right?

—. Yes, sir."

No. of shares.	Name.
70	Baldwin Locomotive.

The testimony of Joseph Gluck on that point is as follows:

"Q. Who got those 70 shares?
A. Nick Cohen and Nick Arnstein."

10	Commonwealth Petroleum Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 35?
A. 10 shares of Commonwealth Petroleum common. That is familiar to me. I am pretty certain I gave that to Nick Cohen.

200	Crucible Steel Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 38?
A. 200 shares of Crucible Steel common. I delivered it to Nick Cohen in the presence of Nick Arnstein."

200	Denver & Rio Grande Railroad Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 41?
A. Denver & Rio Grande Railroad Co. preferred.
Q. How many?
A. There are 300 shares down here. I only know of 200 shares delivered by me to Nick Cohen and Arnstein."

100	Endicott-Johnson Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 43?
A. 100 shares of Endicott-Johnson Co. delivered to Nick Cohen in the presence of Arnstein."

300	B. F. Goodrich Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 46?
A. 300 shares of B. F. Goodrich Co. I don't know if I

gave him two or 300 shares. But I gave it to Nick Cohen. I don't remember who I got that from, either. I gave 2 or 300 down here, but I only can remember 200. But it might have been 300."

No. of shares.	Name.
100	Guffey, Gillespie Oil Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 49?
A. 100 shares of Guffey, Gillespie Oil Co. given to Nick Cohen in the presence of Arnstein."

100	International Mercantile Marine Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 55?
A. International Mercantile Marine preferred; 100 shares. I think that was given to Nick Cohen in the presence of
21 Arnstein."

400	Mexican Petroleum.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 66?
A. 100 shares of Mexican Petroleum. That was given by me to Nick Cohen in the presence of Nick Arnstein. I only gave them 100 shares. There is 300 down here.
Q. Then you must have given him 300?
A. I gave him 400 shares of that. He has only got 300 down. I gave Nick Cohen 400 shares of Mex. Pet."

200	Ohio City Gas Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 73?
A. 200 shares of Ohio City Gas Co. delivered to Nick Cohen in the presence of Arnstein."

320	Pennsylvania R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 74?
A. 320 shares of Pennsylvania Railroad. 300 shares was given to Nick Cohen in the presence of Arnstein."

No. of shares.	Name.
100	Pond Creek.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 76?
A. 100 shares of Pond Creek given to Nick Cohen in the presence of Arnstein.

100	Republic Iron & Steel Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 82?
A. 100 shares of Republic Iron & Steel Co. That was
22 delivered to Nick Cohen."

50	Reynolds Tobacco Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 84?
A. 50 shares of Reynolds Tobacco Co. That was delivered to Nick Cohen in the presence of Arnstein.

300	St. Louis & San Francisco R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 95?
A. 400 shares of St. Louis & San Francisco Rail. I know of 300 shares.
Q. Who did you give the 300 shares to?
A. Nick Cohen, in the presence of Arnstein.
Q. What became of the other 100?
A. I don't know."

100	Studebaker, Inc., Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 97?
A. 300 shares of Studebaker, Inc. common. He has got down 100. I don't know whether it is 100 or 300—it is 100 shares of Studebaker.
Q. You gave the 100 shares to Nick Cohen?
A. Yes sir.
Q. The other 200, what about them?
A. I don't know. Only, if it is in the same delivery, it is the same thing. I can't state."

No. of shares.	Name.
200	Texas Company Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 100?
A. 200 shares of Texas Company preferred. They were 100 each; 200 shares. I gave those to Nick Cohen in the
23 presence of Nick Arnstein."

600	Union Pacific.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 101?
A. 600 shares of Union Pacific. I know of 500 shares of that. That was given to Nick Cohen and Nick Arnstein.
Q. And the other 100 shares?
A. I don't know anything about that. * * * I wish to correct my testimony and say that in reference to No. 101, there is 600 shares of Union Pacific, instead of 500 which I gave to Nick Cohen."

100	United Retail Stores, Inc., Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 103?
A. 100 shares of United Retail Stores, Inc. common. I know of a temporary certificate; that is the one. That was given to Nick Cohen and Nick Arnstein.
Q. That is 100 shares?
A. Yes sir.
Q. Where did that come from?
A. That came from Bamberger, Loeb & Co."

100	Wheeling & Lake Erie.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 108?
A. 100 shares of Wheeling & Lake Erie, given to Nick Cohen and Arnstein.

No. of shares.	Name.
100	Worthington Pump.

The testimony of Joseph Gluck on that point is as follows:

24 "Q. No. 110?

A. 100 shares of Worthington Pump. That was given to Nick Cohen and Nick Arnstein. And there is 15 more I don't know anything about.

Q. What became of the 100 shares?

A. They were given to Nick Cohen and Nick Arnstein. There is 15 other shares that I don't know anything about. That is 115 all together."

Bonds.

Amount.	Name.	Value.
2	Iowa Central Railroad Co.	

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 130?

A. 2 Iowa Central Railroad Co. bonds. 2 bonds, they are register: 1,000 dollar bonds. They were given to Nick Cohen and Nick Arnstein.

Q. They have been located?

A. 2 registered bonds. Were they registered; two names on?

Q. Yes.

A. Those were the only two registered bonds. That leads us up to * * * if that was located, there is a lot of bonds that were delivered to a man in the hospital; at the Post Graduate Hospital, on the second floor. I don't know his name. A Jewish name.

Q. Mortis?

A. No. It is something with a "stein" on the end of it. I can't remember the name. I wasn't up to see him.

Q. Tell us that, because that is very important now. Tell us all about that.

A. Yes, I will tell you: When he was up there in the hospital sick——

Q. (Interrupting.) When was that?

A. That was around October—around September; in the month of September, he was sick; he was on the second floor, his room was a private room.

Q. What was the matter with him?

A. That I can't state. * * * I can't give you the exact date; but you can look it up. I don't know if that will give you any help, the date that he got
25 those bonds. He was sick; Nick Cohen called up, on 14th Street; he called up Long Distance and got Bridgeport."

Amount.	Name.	Value.
$1,000	Wilson & Company.	

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 158?
A. Wilson & Co.; 1 1928—no; there is two different maturity dates. One Wilson & Co. bond was given to Nick Cohen. I don't know which maturity date; 1928 or 1929. That was a 1,000 dollar bond; that was given to Nick Cohen and Arnstein.

4. Joseph Gluck testified that he first met Nick Cohen in September, 1919, through one Stahl; that Cohen subsequently introduced him to Arnstein; that the three of them planned to take the securities to Washington, Philadelphia, Boston and Baltimore, and dispose of them, and the three of them that is to say: Gluck, Arnstein and Cohen, made trips to those cities and disposed of these securities and Joseph Gluck was paid a portion of the proceeds, not only by Cohen but also by Arnstein. Joseph Gluck testified that these trips were during the months of October and November, 1919.

5. The testimony of the bankrupt herein shows that he left this city on or about February 12th last and did not return until May 15th last. Immediately upon his return he was examined before Mr. Gilchrist and was shown by me the same list of securities which was shown to the said Gluck, and he was asked by me to state whether he had any of those securities in his possession or under his control, or whether he did have them in his possession or under his control at any time, and he declined to answer on the ground that the answers might tend to incriminate him or degrade him. The
26 testimony on that point is as follows:

Q. I show you a list of securities and ask you whether you had any of these securities in your possession or under your control? (Handing witness.)
A. I can't answer for the same reason.
Q. Will you look at it, you cannot answer until you look at it?

The Commissioner: Use some judgment.

The Witness: I cannot answer for the same reason, it may incriminate me.

List marked Exhibit 1 for identification of this date."

6. Schedule A hereto annexed is a list of questions which the Commissioner directed the bankrupt to answer and which he refused to answer. Schedule B hereto annexed is a list of questions which the Commissioner asked of the witness which the bankrupt refused to answer. Schedule C hereto annexed is a list of questions put by counsel for the Trustee which the bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him. Schedule D hereto annexed is a list of questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answers might tend to incriminate him which objection the Commissioner sustained to which exception was taken by the Trustee. Schedule E annexed hereto is a list of the questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained and refused to instruct the witness to answer, to which refusal the Trustee excepted.

SAUL S. MYERS.

Sworn to before me this 1st day of June, 1920.

A. MALES,
Notary Public.

Bronx County Clerk's No. 11.
Bronx Co. Reg. No. 2181.
N. Y. County Clerk's No. 448.

27 SCHEDULE A.

This is a schedule of questions which the Commissioner directed the Bankrupt to answer and which he refused to answer.

		Page.
1.	Where you spent it? (Referring to the sum of $500, which the bankrupt testified he had when he left New York in February last?.....	2330
2.	You have the knowledge? (Referring to the place where the Bankrupt spent the sum of $500, which he testified he had when he left New York in February last)	2330
3.	You refuse to answer the question whether or not you have the knowledge where you spent it?.....	2331
4.	What property had you which you referred to the other day, some seven months prior to the commencement of the proceeding in bankruptcy?.....	2334
5.	Were you in October, 1919, in the possession of any property?	2338
6.	Have you had any property besides the $500 you mentioned, within the last seven months preceding the petition in bankruptcy?.....	2345
7.	Aside from the $500 you spoke of, have you had any money or property in your possession, or held by you, since the filing of the bankrupt petition?.....	2351

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8. Did you instructed Messrs. Fallon & McGee to appear for you in this bankruptcy proceeding? 2353
9. Did you at any time during the past six months hear any conversation between Joe Gluck and Nick Cohen? 2382

Arnstein's Testimony.

10. What city did you get the machine? (Referring to the automobile in which the bankrupt returned to New York City after being away since Lincoln's Birthday, 1920.) 69
11. Will you say where you were yesterday? 72
12. Do you know Randolph Newman, the lawyer? 76
13. Do you know Nick Cohen? 2157
14. Have you ever had any business transactions with him of any nature, kind or description? (Referring to Nick Cohen.) 2164
15. How much money have you in your possession or under your control? 2180

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SCHEDULE B.

This is a schedule of questions which the Commissioner asked the Bankrupt and which he refused to answer.

Arnstein's Testimony.

1. Have you had any business relations with them Mr. Arndstein, or with any one of the persons that Mr. Myers has questioned you about? 29

30

SCHEDULE C.

This is a schedule of questions put by counsel for the Trustee which the Bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him.

Arnstein's Testimony.

Page.

1. Will you state to the Court where you went first, just before Lincoln's Birthday of this year? 8
2. Where did you come from 9
3. Where did you go first when you got in New York State? 9
4. Well, where did you go? 9
5. Will you say where you were yesterday 9
6. Have you received any communication from your wife since Lincoln's Birthday, either directly or indirectly? 22
7. When did you see Joe Gluck last? 26

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8. Do you say whether you know him or not?..... 26
9. Do you know Irving Gluck?..... 27
10. Do you know Rudolph Bunora? 27
11. Do you know Herbert Bunora? 27
12. Do you know Murray Fox? 27
13. Do you know James Kean? 27
14. Do you know David Haines? 27
15. Do you know Ed. Furey? 27

31

16. Do you know David Sullivan? 27
17. Do you know Norman S. Bowles? 27
18. Do you know W. W. Easterday? 27
19. Well, do you know Hartford Jimmy?..... 27
20. Do you know Al Hunter? 28
21. Do you know Billy King? 28
22. Do you know Phil. Kastel? 28
23. Do you know Nick Cohen? 28
24. Do you know Charlie Drucker? 28
25. Do you know Eddie Winkler? 28
26. Do you know Arthur Ecrement? 28
27. Did you ever know Mortimore Bernstein?..... 29
28. Do you know Louis Bleet?..... 30
29. Do you know Cheeks Ginsberg? 30
30. Do you know anyone in Cleveland? 30
31. Do you know Samuel T. Haas? 30
32. Do you know Joseph Klein? 30
33. Do you know Don Lloyd? 30
34. Do you know Dan Lloyd? 30
35. Do you know Joe Marion? 30
36. Do you know George Hackett? 31
37. Do you know Sam Gireau? 31
38. Do you know Michael Radice? 31
39. Don't you know this man? (Showing witness photograph, Exhibit 6 for identification of April 28th, 1920.) 31

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40. You won't say whether you know that man or not?... 31
41. Do you know this man? (Showing witness photograph, Exhibit 5 for identification of April 28th, 1920.) 31
42. Do you know this man? (Showing witness photograph, Exhibit 7 for identification of April 28th, 1920.) 32
43. Do you know this man? (Showing witness photograph, Exhibit 7 for identification of April 28th, 1920.) 32
44. Do you know this man? (Showing witness another photograph 32

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45. Do you know Mattie Pandolff? 32
46. Do you know Joe Peppe? 32
47. Do you know Jimmy Ryan? 32
48. Do you know E. P. Strong? 33
49. Do you know Frank Thompson? 33
50. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control? (Showing witness a list marked for identification of May 15th, 1920.) 33
51. Did you ever see any stocks or bonds during the past year, anywhere? 36

33

52. Did you touch any stocks or bonds any time, or place, within the past year? 35
53. Did you buy or sell any shares of stock or bonds at any time during the past year? 35
54. Do you say that you never had in your possession or under your control, a single share of stock or bond mentioned in this list Exhibit 1 for identification of this date? 36
55. Well, do you say that you never saw those securities?.. 36
56. You say you never touched them? 36
57. Did you ever see them in anyone else's possession?.... 36
58. Did you ever go to Washington with Nick Cohen?.... 38
59. Did you ever meet Nick Cohen in Washington?..... 38
60. Have you invested any money anywhere in the past year? 39
61. Have you handled any moneys since Lincoln's Birthday this year? 39
62. Have you had any property in your possession anywhere since Washington's Birthday this year? 39

34

63. Where have you been living?..... 42
64. State them? (Referring to 'various places' where Arnstein said he had been..... 43
65. Will you state where you were this morning, before you went to Court?..... 51
66. Will you state your movements from the time you arrived in New York City this morning?..... 51
67. Will you state with whom you spoke in New York today? 52
68. Where did you get into that first automobile?..... 71
69. Where did you go to when you left New York February 10th or 11th this year?..... 73
70. Where have you been since February 10th of this year? 73
71. In how many different cities have you been since the 10th of February this year?..... 73

		Page.
72.	What persons did you talk with since the 10th of February this year?	73
73.	What banks, trust companies, safe deposit companies, or brokers have you visited since the 10th of February this year?	74
74.	How often have you seen Nick Cohen since the 10th of February this year?	74
75.	How often have you seen Phil. Kastel since the 10th of February this year?	74
35		
76.	How often have you seen Charles Drukker since the 10th of February this Year?	74
77.	How often have you seen Ed. Strong since the 10th of February this year?	74
78.	Did you telephone to anyone today?	74
79.	Did you telephone to anyone yesterday?	75
80.	Have you made any statement about your affairs to anyone in the past six months?	75
81.	Have you authorized any such statement?	75
82.	Do you know any brokers in New York City?	75
83.	Have you ever authorized anybody to buy or sell any shares of stock for you?	75
84.	Have you ever authorized anybody to buy or sell any bonds for you?	75
85.	Have you ever borrowed any money in the past year?	75
86.	Have you loaned any money in the past year?	75
87.	Have you handled any money or any property of any nature, kind or description, in the last six months, excepting the $500 which you have testified you received from your wife in February of this year, just before — left New York?	75
88.	Did you meet the Gondorfs at Atlantic City?	76
89.	Did you visit them in Atlantic City?	76
90.	Do you know O'Brien, the clerk at the Hotel Claridge?	77
91.	Do you know Mr. Washer, who has a cafe at 86th Street & Broadway?	77
36		
92.	What other source? (Referring to the source from which the Bankrupt received the information that his return to the city was being obstructed.)	83
93.	Where have you been since the time of the filing of the petition in bankruptcy in this case?	2156

37 SCHEDULE D.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, to which exception was taken by Counsel for the Trustee.

Arnstein's Testimony.

1. What other names? (Referring to the fact that *that* the Bankrupt has been known under various names? 2
2. By what other names have you been known besides Jules Arndstein?..... 2153
3. Where did you go on February 10th of this year?.... 2155
4. Do you refuse to answer?..... 2155
5. On the ground that the answer might tend to incriminate you? 2155
6. In reference to the possible violation of a Federal Statute? 2155
7. Now, what Federal Statute do you claim that you might possibly be indicted for violating?..... 2155
8. How long have you known Nick Cohen?..... 2160

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9. When did you see him last?..... 2161
10. Did you ever receive any property of any kind from Nick Cohen? 2161
11. Did you ever give any property of any kind, at any time, to Nick Cohen?..... ....
12. Have you ever had any correspondence with Nick Cohen since February 10th last?..... 2161
13. Did you have any communication of any nature, kind or description with Nick Cohen since February 10th last?..... 2162
14. Did you ever know? (Referring to where Nick Cohen lived? 2162
15. Where did you see him (Nick Cohen) last; in what city? 2163
16. Will you say whether you saw him this year? (Referring to Nick Cohen.)..... 2163
17. Or last year? (Referring to when the witness last saw Nick Cohen.) 2163
18. Or the year before? (Referring to when the witness last saw Nick Cohen.)..... 2163
19. Or the year before that? (Referring to when the witness last saw Nick Cohen.)..... 2163
20. Have you seen him during the past five years? (Referring to when the witness last saw Nick Cohen.... 2163
21. Have you ever been in business with Nich Cohen?.... 2164

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		Page.
22.	What have been the nature of your dealings with Nick Cohen?	2166
23.	What dealings have you had with Nick Cohen during the past year?	2163
24.	Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last?	2166
25.	Do you remember meeting Joe Gluck and going with him at the same time?	2167
26.	Do you remember meeting David Sullivan in the Pennsylvania Station at the same time?	2167
27.	Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last?	2167
28.	Do you remember receiving a satchel full of stolen securities from Joe Gluck in the Pennsylvania Station on October 12th last?	2167
29.	You do not deny that?	2167
30.	Do you deny that you and Joe Gluck and Nick Cohen proceeded to Washington on or about October 12th last with a satchel full of stolen securities, to your knowledge?	2167
31.	Do you remember receiving some money from Nick Cohen in Washington, D. C. on or about October 13th last?	2168
32.	Did you go to Boston with Joe Gluck and Nick Cohen in October last?	2169
33.	Did you go to Baltimore, Maryland with Joe Gluck and Nick Cohen in October last?	2169
40		
34.	Did you go to Philadelphia with Joe Gluck and Nick Cohen in October last?	2169
35.	Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in any of those cities, in October and November last?	2169
36.	Whom did you meet in Washington, D. C., in October last?	2169
37.	Whom did you meet in Boston in October and November last?	2169
38.	Whom did you meet in Philadelphia and Baltimore in October and November last?	2169
39.	Whom did you meet in Hoboken, New Jersey, in October and November last?	2169
40.	Did you visit any banks, trust companies, or safe deposit companies in October, November or December last, or any time this year?	2170
41.	Do you know Joseph Gluck?	2170
42.	Do you know Irving Gluck?	2170
43.	Do you know Charles Drukker?	2170
44.	Do you know Eddie Winkler?	2170

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45. Where did you get the money? (Referring to the money which the bankrupt said he had in his possession and under his control.) 2181
46. When did you get it? (Referring to the money which the Bankrupt said he had in his possession and under his control.) 2181

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47. Did you get it this year? (Referring to the money which the Bankrupt said he had in his possession and under his control?) 2181
48. Did you receive the money last year? (Referring to the money which the Bankrupt said he had in his possession and under his control.) 2183
49. Did you receive it more then two years ago? (Referring to the money which the bankrupt said he had in his possession and under his control?) 2183
50. Did you receive it more than three years ago? (Referring to the money which the Bankrupt said he had in his possession and under his control.) 2183
51. Did you get it five years ago? (Referring to the money which the Bankrupt said he had in his possession and under his control.) 2184
52. What bank accounts have you had in the past five years? 2188
53. What bank accounts have you had in the past four years? 2188
54. What bank accounts have you had in the past year? ... 2188
55. What safe deposit boxes have you had in the past five years? 2189

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56. What business were you in at the time of the filing of the petition in bankruptcy in this proceeding? ... 2189
57. What business interests did you have at the time of the filing of the petition in bankruptcy in this proceeding? 2189
58. What other property? (Referring to the testimony of the bankrupt that since the filing of the petition in bankruptcy in this proceeding he has had a little money from time to time.) 2198
59. How much money have you had since the filing of the petition in bankruptcy in this proceeding? 2199
60. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy 2199
61. Have you had any automobiles during the past year? .. 2200
62. Have you had any diamonds or jewelry during the past year? 2200

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63. Have you had any stocks or bonds during the past year, either in your name or possession or under your control? 2203
64. Have you had access to any safe deposit boxes during the past year? 2203
65. Have you had any bank accounts any where in the United States during the past year? 2203
66. Have you had any safe deposit boxes, either in your

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name or in anyone else's name anywheres in the United States, during the past year? 2204
67. Do you know Joseph Gluck? 2204
68. When did you see Joseph Gluck last? 2204
69. Have you seen him (Joseph Gluck) at all during the past five years? 2204
70. Have you seen him (Joseph Gluck) at all during the past ten years? 2204
71. Have you seen Joseph Gluck during the past year? 2204
72. Have you seen him (Joseph Gluck) during the past six months? 2205
73. Have you seen him (Joseph Gluck) at any time or place during the past ten years? 2205
74. Did you ever receive any property of any kind, nature or description from Joseph Gluck? 2205
75. Do you know Philip Kastel? 2205
76. Who is he? ....
77. Do you know where Philip Kastel lives? 2206
78. When did you see him last? (Philip Kastel.) 2206
79. Where did you see him (Philip Kastel) last? 2206
80. How long have you known him (Philip Kastel)? ....
81. Do you know where he (Philip Kastel) is now? 2207

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82. Where was he (Philip Kastel) when you saw him last? 2207
83. Have you been in communication with Philip Kastel during the past year? 2207
84. Have you been in communication with Joseph Gluck during the past year? 2207
85. Do you know one Ed. Winkler? 2207
86. How long have you known Ed. Winkler? 2207
87. Do you know where he (Ed. Winkler) is now? 2208
88. Do you know where he (Ed. Winkler) lives? 2208
89. When did you see him last (Ed Winkler)? 2208
90. Did you ever receive any property from him (Ed. Winkler)? 2208
91. Directly or indirectly? (Referring to property claimed to have been received by the bankrupt from Ed. Winkler). .....

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92. Of any nature, kind or description? (Referring to property claimed to have been received by the bankrupt from Ed. Winkler) 2208
93. Have you ever had any communication with him (Ed. Winkler) during the past year? 2208
94. Do you know where Nick Cohen is? 2208
95. How long have you known him (Nick Cohen)? 2208
96. Do you know his (Nick Cohen) address? 2208
97. Do you know where the Court could find him? (Nick Cohen) 2209

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98. Do you know where a communication could be delivered to him? (Nick Cohen) 2209
99. Have you had any communication with him (Nick Cohen) during the past year? 2209
100. Did you ever receive any property from him (Nick Cohen) directly or indirectly? 2209
101. Do you know Charles Druckker? 2209
102. Well, do you know where he lives? 2209
103. Can you give a description of him? (Charles Druckker) 2209
104. When did you see him last? (Charles Druckker) 2209
105. Where did you see him last? (Charles Druckker) 2209
106. How long have you known him? (Charles Druckker). 2209
107. Did you receive any property from him of any nature, kind or description during the past year? 2210
108. Have you ever had any business transactions with Charles Druckker? 2210
109. Or with Nick Cohen? 2210
110. Or with Edward Winkler? 2210
111. Or with Philip Kastel? 2210
112. Or with Joseph Gluck? 2210
113. Do you know David Sullivan? 2210
114. Have you ever had any business dealings with him?.. 2210
115. Did you ever receive any property from him? (David Sullivan) 2210

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116. Did you ever give any property to him? (David Sullivan) 2210
117. Do you know what city he (David Sullivan) lives in?. 2210
118. Will you say when you spoke with him last? (David Sullivan) 2211
119. Do you know John Hogan? 2211
120. Do you know where his (John Hogan) office is? 2211
121. Did you ever have any business dealings with him? (Referring to John Hogan) 2211
122. Did you ever have any communication with him during the past year? (Referring to John Hogan).. 2211

		Page
123.	Do you know Murray Fox?	2211
124.	Do you know where he (Murray Fox) lives?	2211
125.	Or what his (Murray Fox) business is?	2211
126.	Did you ever receive any property from him? (Murray Fox)	2211
127.	Do you know Kenneth Bernard?	2211
128.	Did you ever have any business dealings with him? (Kenneth Bernard)	2211
129.	Did you ever know Mortimer Bernstein?	2212
130.	Did you ever have any business dealings with him (Mortimer Bernstein)?	2212
131.	Did you ever give him (Mortimer Bernstein) any property of any nature, kind or description?	2212
47		
132.	Did you ever receive any property from him (Mortimer Bernstein) of any nature, kind or description?	2212
133.	How long did you know him before he (Mortimer Bernstein) died?	2212
134.	How well did you know him (Mortimer Bernstein)?	2212
135.	Do you know Louis Bleet?	2212
136.	Do you know where he (Louis Bleet) is now?	2212
137.	When did you see him (Louis Bleet) last?	2212
139.	Did you ever receive any property from him (Louis Bleet)?	2213
140.	Have you ever given any property to him (Louis Bleet)?	2213
141.	Have you ever had any communication with him of any kind during the past year? (Referring to Louis Bleet)?	2213
142.	Do you know Norman S. Bowles?	2213
143.	Did you ever meet him (Norman S. Bowles)?	2213
144.	Did you ever have any business transactions with him (Norman S. Bowles)?	2213
145.	Do you own any real estate now?	2213
146.	Do you know W. W. Easterday?	2214
147.	Well, did you ever see W. W. Easterday anywhere?	2214
148.	Did you see W. W. Easterday at the Bretton Hall Hotel, New York City, on October 12th last?	2214
149.	Did you see him there with one Nick Cohen at that time?	2214
48		
150.	Do you know where W. W. Easterday lives?	2215
151.	Can you describe him (W. W. Easterday)?	2215
152.	Did you ever receive any property from him (W. W. Easterday)?	2215
153.	Did you ever give him any property? (Referring to W. W. Easterday)	2215
154.	Did you ever receive any money from him? (W. W. Easterday)?	2215

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155. Did you receive any money from him during October, November and December last year? (Referring to receipt of money by the Bankrupt from W. W. Esterday) 2215
156. Or any time this year? (Referring to receipt of money by the Bankrupt from W. W. Easterday) 2215
157. Well, if you did, will you say what you did with it? (Referring to receipt of money by the bankrupt from W. W. Easterday) 2215
158. Did you meet W. W. Easterday in Washington Last October and November? 2215
159. Did you meet David Sullivan in Washington last October and November? 2216
160. Did you meet Joseph Gluck in Washington last October and November? 2216
161. Did you meet any of those persons in Boston, Philadelphia, and Baltimore, last October, November and December? 2216
162. Were you ever in the Hotel Touraine last year? 2216

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163. Were you in the Hotel Bellevue-Stratford in Philadelphia last Fall? 2216
164. Were you at the Hotel Belvedere in Baltimore last Fall? 2216
165. Who did you meet in those hotels last Fall? 2216
166. Did you ever register in any hotel outside of New York under any other name than Arnold? 2216
167. Did you ever go under any other name? 2216
168. Have you been out of the United States during the past six months? 2217
169. Have you been out of New York State during the past six months? 2217
170. What cities have you visited during the past six months? 2217
171. With what persons have you talked during the past three months? 2217
172. What banks, trust companies, or safe deposit boxes have you been to in the past three months? 2217
173. Have you been to Cleveland, Ohio? 2217
174. Did you there meet Cheeks Ginsberg? 2217
175. Or Roughy Ginsberg? 2217
176. Or Paddy Goldberg? 2217
177. Or Forrest L. Graves? 2218
178. Or E. P. Strong? 2218
179. Or Dona Arkin? 2218
180. Or Samuel Haas? 2218

50 Pa

181. Do you know whether this lawyer, Samuel Haas, has been convicted in Cleveland, Ohio?..... 221
182. Was he convicted in reference to any transaction which you had with him?..... 221
183. Did you ever have any transactions with him?..... 221
184. Is E. P. Strong your attorney in Cleveland?..... 221
185. Is Samuel Haas an associate of E. P. Strong?..... 221
186. Have you ever had any business dealings with E. P. Strong?..... 221
187. Did you have a room there? (Referring to the Winton Hotel in Cleveland, Ohio where the Bankrupt said he was on February 23rd, 1920)..... 22
188. Did you meet E. P. Strong in that hotel? (Referring to February 23rd, 1920 at the Winton Hotel in Cleveland, Ohio..... 22
189. Do you know Nate Cook from Cleveland?
190. Do you know Henry Beckerman of Cleveland?..... 22
191. Do you know Samuel Doerfler, D-o-e-r-f-l-o-e-r, of Cleveland?..... 22
192. Do you know Ernest Bernstein of Cleveland?..... 22
193. Do you know Aleck Bernstein of Cleveland?..... 22
194. Have you ever had any business transactions with any of these persons?..... 22
195. Have you ever delivered any securities to any of these persons?..... 22
196. Or received any money from them? (Referring to

51 Nate Cook, Henry Beckerman, Samuel Doerfler, Ernest Bernstein, Aleck Bernstein)..... 22
197. Have you at any time during the past six months heard any conversation between Joe Gluck and Nick Cohen?..... 22
198. Do you know under what different names Nick Cohen has been known?..... 22
199. Do you know whether he (Nick Cohen) is an ex-convict?..... 22
200. Do you know whether he is the man who was convicted under the name of Harry Davis and served a term in a Cleveland Penitentiary?..... 22
201. Do you know whether he has been known as Mack?.. 22
202. Have you been known as George?..... 22
203. Do you know Arthur Ecrement?..... 22
204. Did you ever have any business dealings with him (Arthur Ecrement)?..... 22
205. Did you ever hand him any securities, directly or indirectly? (Referring to Arthur Ecrement)..... 22
206. Or receive any money from him (Arthur Ecrement) directly or indirectly?..... 22
207. Did you meet him (Ecrement) in Chicago recently?.. 22
208. Did you meet Phil Kastel in Chicago recently?..... 22

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209. Did you meet Charles Druckker in Chicago recently?. 2226
52
210. Did you meet Ed. Winkler in Chicago recently?..... 2226
211. Did you ever, in the past three months, hand any one of those persons any securities of any nature, kind or description? (Referring to Kastel, Druckker and Winkler)
212. Or receive any money from them? (Referring to Kastel, Druckker and Winkler)..... 2226
213. Do you know Ed. Furey?..... 2226
214. Did you ever see Ed. Furey?..... 2226
215. Did you ever have any business dealings of any kind with him? (Ed. Furey)..... 2226
216. Did you ever receive any property from him of any nature, kind or description? (Referring to Ed. Furey)
217. Or give him (Ed. Furey) any? (property)..... 2226
218. Do you know James Kean of Montreal?..... 2227
219. Or James Kean of Perth, Ontario?..... 2227
220. Did you ever have any dealings with him (James Kean) of any nature, kind or description?..... 2227
221. Do you know Joseph Klein?..... 2227
222. Did you ever have any business dealings with him (Joseph Klein) of any nature, kind or description? 2227
223. Did you ever give to him (Joseph Klein) or receive from him any property of any nature, kind or description? 2227
53
224. Do you know Don Lloyd, or Dan Lloyd, either one?.. 2227
225. Did you ever have any dealings with either one of those persons? (Referring to Don Lloyd and Dan Lloyd) 2227
226. Did you ever give them (Don Lloyd and Dan Lloyd) any property? 2227
227. Or receive any from them? (Don Lloyd and Dan Lloyd) 2227
228. Do you know Joe Marino?..... 2228
229. Or Sam Gireau?..... 2228
230. Or Michael Radice, R-a-d-i-c-e?..... 2228
231. Or George Hackett?..... 2228
232. Or John Loomis?..... 2228
233. Or Frank Bradford?..... 2228
234. Did you ever have any business dealings with them (Referring to Marino, Gireau, Radice, Hacket, Loomis and Bradford) of any nature, kind or description? 2228
235. Did you ever give them any property? (Referring

Page

to the above named persons) 2228
236. Or receive any from them? (Referring to the above named persons) 2228
237. Have you had any communication with any of these persons about whom I have asked you, at any time during the past three months? 2228
238. Do you know whether Nick Cohen has? Referring to the fact that the Bankrupt has an account in the Pacific Bank) 2230
54
239. Or any of these persons about whom I have questioned you? (Referring to the fact as to whether any of the persons referred to in this testimony had a bank account in the Pacific Bank to the knowledge of the Bankrupt) 2230
240. Have you any there? (Referring to an account in The Pacific Bank) 2231
241. Have you any safe deposit box there? (Referring to The Pacific Bank) 2231
242. Do you know anyone who has? 2231
243. Do you know Mattie Pandolfi? 2231
244. Do you know Joe Peppe? 2231
245. Or Jimmy Ryan, otherwise known as the Postal Kid? 2231
246. Or Frank Thompson? 2231
247. Did you deliver any property of any nature, kind or description to any of those persons in the past six months? (Referring to Pandolfi, Peppe, Ryan and Thompson) 2231
248. Did you receive any from them? (Referring to Pandolfi, Peppe, Ryan and Thompson) 2231
249. Have you been in communication with any of them during that time? (Referring to Pandolfi, Peppe, Ryan and Thompson) 2231
55
250. Did you ever live at the Wellington Hotel in this city? 2234
251. Have you been there during the past year? 2234
252. Did you ever receive any money from David Sullivan in New York City? 2234
253. During the past year? (Referring to any money received from David Sullivan in New York City?) .. 2235
254. Did you receive any money from David Sullivan any other place during the past year? 2235
255. Did you receive any money from Nick Cohen at any place during the past six months 2235
256. Or during the past year? 2235
257. Did you give any money to your wife during the past year? 2235
258. Have you been in Atlantic City during the past three months? 2240

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259. Have you been in or near Pittsburgh during the past three months? 2240
260. Do you know anybody by the name of Henry Stern?.. 2240
261. Have you sent any securities, directly or indirectly to any other country during the past six months?.... 2241
262. Have you had any communication, directly or indirectly with anyone in any foreign country, during the past six months?... 2241
263. Do you remember meeting Joe Gluck and Nick Cohen at Washers Cafe last October?..... 2241

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264. Do you remember going with them to the Pennsylvania Station? (Referring to Joseph Gluck and Nick Cohen.) 2242
265. Do you remember meeting Joe Gluck and Nick Cohen at the Hotel Endicott in this City, last November?.. 2242
266. Do you know anybody in Cleveland by the name of Feder, F-e-d-e-r? 2242
267. Were you at the Hotel Hollander in Cleveland during the past three months? 2242
268. Where you at the home of Dona Arkin while you were in Cleveland during the past three months?..... 2243
269. But you did meet her (Dona Arkin) at the Hotel Winton, didn't you? 2243
270. Or Fannie Brice's mother; you did not meet her during the past six months? 2244
271. Would that incriminate you, or tend to? (Referring to meeting Frannie Brice's Mother.)..... 2244
272. Were you at any gambling houses in Cleveland during the past three months? 2245
273. Were you in any gambling houses anywhere in the United States during the past three months?..... 2245
274. Were you living on the gains of gambling houses during the past three months 2245

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Schedule E.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee, to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, and refused to instruct the witness, to which refusal counsel for the Trustee excepted.

1. Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities, in October, 1919? 2339

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2. Did you not have in your possession in October, 1919, at the Pennsylania Railroad Station in New York City, and on the train between New York and Washington, a satchel full of securities 2360
3. Mr. Arndstein, have you had access to any safe deposit box during the past year? 2361
4. Have you had any bank account anywhere in the United States during the past year? 2362

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5. Have you had any safe deposit box either in your name or in the name of any other person, to which you had access anywhere in the United States, during the past year? 2362
6. What is the largest you recall? (Referring to the Bankrupt's balance in the Pacific Bank, the Bankrupt having admitted that he had an account in the Pacific Bank.) 2363
7. What have been the nature of your dealings with Nick Cohen? 2364
8. What dealings have you had with Nick Cohen during the past year? 2364
9. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last? 2366
10. Do you remember meeting Joe Gluck and going with him at the same time? 2366
11. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time? 2366
12. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last? 2366
13. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in Baltimore, Maryland, or New York City, Philadelphia, or Boston, in October or November last? 2367

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14. Do you know Joseph Gluck, Irving Gluck, Charles Druckker, Eddie Winkler, or any of them? 2367
15. Where did you get the money? (Referring to the fact that the witness had testified that he had certain monies in his possession and under his control.) 2370
16. Did you get it this year? (Referring to moneys above referred to.) 2370
17. Mr. Arndstein, have you delivered any securities to any person, within four months next preceding the filing of the bankrupt petition? 2371
18. In answer to the question whether you had any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding, you answered: "Yes; I have had a little money from time to time." From what source did you get that

Page.
money? ... 2372
19. Have you had in your possession at any time since the filing of the petition in bankruptcy, any diamonds or jewelry? ... 2373
20. Have you had any stocks or bonds during the past year, either in your name or possession, or under your control? ... 2374
21. Have you had access to any safe deposit boxes during the past year? ... 2374
60
22. Did you ever receive any property of any nature, kind or description from Joseph Gluck ... 2374
23. Do you know Philip Kastel? ... 2374
24. Have you been in communication with Philip Kastel during the past six months? ... 2375
25. Have you been in communication with Joseph Gluck during the past year? ... 2375
26. Did you deliver any securities to Nick Cohen at any time in October, November or December 1919 or January 1920? ... 2375
27. Do you know Ed Winkler? ... 2376
28. When did you see Ed. Winkler last? ... 2376
30. Did you ever deliver or transfer any securities to Nick Cohen since the first of October last. ... 2376
29. Did you ever receive any property from Ed. Winkler? 2376
31. Did you deliver any securities, or send any securities to David Sullivan, since October 1st, 1919? ... 2377
32. Had you any business transactions with David Sullivan since October 1st, 1919? ... 2377
33. Did you ever receive any property from David Sullivan since October 1st 1919? ... 2377
34. Did you have any business transactions with W. W. Easterday at any time since the first of October, 1919? 2378
61
35. Did you ever receive any property from W. W. Easterday? ... 2378
36. Did you ever give any property, or hand over any property to W. W. Easterday, since the 1st of October, 1919? ... 2379
37. Did you ever receive any money from W. W. Easterday since the 1st of October, 1919? ... 2379
38. Did you at any time in last October or November meet David Sullivan? ... 2379
39. What banks, trust companies, or safe deposit companies have you been to in the past three months? ... 2379
40. Did you, since the 1st of October, 1919, place any securities in any safe deposit box anywhere? ... 2380
41. Have you at any time since the 1st of October 1919 sold or transferred any stocks or bonds? ... 2380

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42. Have you received, since the 1st of October, 1919, any moneys purporting to be the proceeds of any stocks or bonds, and if so, in what amount? 2380
43. Do you refuse to state whether you know Nate Cook of Cleveland, Mr. Arndstein? 2381
44. Do you refuse to state whether you know Henry Beckerman of Cleveland? 2381
62

45. Do you know Samuel Doerfler of Cleveland?..... 2381
46. Do you know either Ernest Bernstein of Cleveland or Aleck Bernstein of Cleveland?..... 2382
47. Do you know under what different names Nick Cohen has been known?..... 2381
48. Did you ever have any business dealings with Nick Cohen since October 1st, 1919?..... 2384
49. Do you know Arthur Ecremont?..... 2384
50. Did you ever deliver any securities to Authur Ecremont since October 1st, 1919?..... 2384
51. Did you receive any money, directly or indirectly from Arthur Ecrement since October 1st, 1919?..... 2385
52. Have you, at any time since the filing of the Bankruptcy petition herein, delivered any property over to Arthur Ecrement or Phil. Kastel, Charles Druckker Ed. Winkler, or Ed. Furey, or any of them?..... 2385
53. Did you receive, from any of those men, during that period any money or securities?..... 2385
54. Didn't you draw a check on that bank account (The Pacific Bank account) since the 1st of January, 1920, for about $16,000..... 2387
55. Did you receive any money from David Sullivan any other place than New York City during the past year? 2387
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56. Do you decline to answer whether you received any money from David Sullivan in New York City?.... 2387
57. Have you given any money to your wife since the 1st of October, 1919?..... 2388
58. Have you sent any securities, directly or indirectly to any other country from this country, during the past six months?..... 2389
59. Did you meet Joe Gluck and Nick Cohen at the Hotel Endicott in this City last November?..... 2389
60. Were you at any gambling houses in Cleveland during the past three months..... 2390
61. Were you in any gambling houses anywhere in the United States during the past three months?..... 2390
62. Did you lose any funds in any gambling house during the past five months?..... 2390
63. Did you at any time since October 1st, 1919, receive any profits of any gambling houses?..... 2391

Arnstein's Testimony.

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64. Well, who was with you just before you met your wife and Mr. Fallon?..... 79

64 District Court of the United States for the Southern District of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Joseph K. Guerin.

STATE OF NEW YORK,
County of New York, ss:

Joseph K. Guerin, being duly sworn, deposes and says:

I. I am over the age of twenty-one years and a clerk in the office of Saul S. Myers, Esq., the attorney for the Trustee in Bankruptcy herein.

II. On May 24th, 1920, I served the annexed order of Adjudication in Bankruptcy on the Bankrupt at the United States Post Office Building in the Borough of Manhattan, In the City of New York by delivering to and leaving with him a certified copy of said Order of Adjudication.

III. On the same day I delivered a certified copy thereof to Messrs. Fallon & McGee, the Bankrupt's attorneys herein, as more fully appears from their admission of service on the back of the annexed Order of Adiudication.

65 IV. I attended before Commissioner Gilchrist on May 24th, 1920, on the examination of the Bankrupt herein under Section 21 A of the National Bankruptcy Act. The Bankrupt testified at that time that he had known of the adjudication of bankruptcy against him before coming to New York on May 15th, 1920, that he had not prepared or filed any schedules of assets and liabilities and had not attempted to prepare any, and was not engaged in preparing any. The testimony on that point is as follows:

"Q. From what newspaper did you receive your information of the adjudication of the bankruptcy against you?

A. I do not know which one.

Q. But you did learn of that before you returned to this city?

A. I cannot fix any time, sir, I do not know.

Q. You do not know whether you knew of it before you came back to the city?

A. I knew of it before I came back but I do not know what time.

Q. Have you prepared any list of your assets and libilities in this bankruptcy proceeding?
A. I have not prepared anything, sir, at no time.
Q. Are you at work preparing them?
A. No, sir.
Q. Have you made any effort so far to prepare any such schedules of your assets and libilities in this bankruptcy proceeding?
A. No, sir."

JOSEPH K. GUERIN.

Sworn to before me this 1st day of June, 1920.

A. MALES,
Notary Public.

Bronx Co. Clerk's No. 66.
Bronx County Register's No. 2161.
New York County Clerk's No. 449.
New York County Register's No. 1400.

66 In the District Court of the United States for the Southern District of New York.

In Bankruptcy.

In the Matter of NICHOLAS ARNSTEIN, Alias J. W. ARNOLD, Alias JAMES WILFRED ADAIR, &c., Bankrupt.

At New York City, in said District, on the 4th day of March, A. D. 1920, before the Honorable Learned Hand, Judge of the said Court in Bankruptcy, the petition of National Surety Company, that Nicholas Arnstein be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and bankrupt having been served and defaulted in pleading, the said Nicholas Arnstein, alias J. W. Arnold, alias James Wilford Adair, alias James W. or J. W. Ames, alias McCormick, alias Borach, alias Brice, is hereby declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Seaman Miller, one of the referees in bankruptcy of this Court, to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the 9th day of March, 1920, at 10 o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to his said bankruptcy.

Witness, the Honorable Learned Hand, Judge of the said Court, and the seal thereof, at The City of New York, in said District, on the 4th day of March, A. D. 1920.

LEARNED HAND,
District Judge.

ALEX GILCHRIST, JR.,
Clerk.

A true copy.

[SEAL.] ALEX GILCHRIST, JR.,
Clerk.

Schedule A (1).
Form 451.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

SCHEDULE A.

(1) *Statement of all Debts of Bankrupt.*

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated.)	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.	Amount
(1.)						
Taxes and debts due and owing to the United States.	....	None.	.....	.....	.....	00 00
(2.)						
Taxes due and owing to the State of —— or to and county, district, or municipality thereof.	....	None.	.....	.....	.....	00 00

(3.)

Wages due workmen, clerks or servants to an amount not exceeding $300 each, earned within three months before filing the petition.	....	None.	.....	.....	..... 00 00
(4.)					
Other debts having priority by law.	....	None.	.....	.....	..... 00 00

Total ...

JULES W. ARNDSTEIN,
Petitioner.

Schedule A. (2).
Form 452.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

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SCHEDULE A.

(2) *Creditors Holding Securities.*

(N. B.—Particulars of securities held, with dates of same and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.)

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated.)	Description of securities.	When and where debts were contracted.	Value of securities.	Amount of debts.
....	None.....	None.....	None.....	None.....	None.....	None.....

Total..... 00

JULES W. ARDNSTEIN,
Petitioner.

Schedule A. No. 3.
No. 453.

SCHEDULE A.

(3) *Creditors Whose Claims are Unsecured.*

[N. B.—When the name and residence [or either] of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated.)	When and where contracted.	Nature and consideration of the debt and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner, or joint contractor with any other person; and, if so, with whom.	Amount.
	Fanny Arndstein	1 W. 83	Feb. 11, 1920	Borrowed	9,000.00
	" "	1 W. 83	Feb. 15, 1920	Money advanced on payment of obligation	5,000.00
	" "	1 W. 83	Feb. 9, 1920	Borrowed	500.00
				Total 14,500	14,500.00

JULES W. ARNDSTEIN, *Petitioner.*

70 Schedule A (4).
Form 454.

H. K. Brewer & Co., Incorporated,
58 Liberty Street—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

SCHEDULE A.

(4) *Liabilities on Notes or Bills Discounted which Ought to be Paid by the Drawers, Makers, Acceptors or Indorsers.*

[N. B.—The date of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders as far as known.	Residence (if unknown, that fact must be stated.)	Place where contracted.	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount.
	None.....	None.....	None.....	None	None

Total 000

JULES W. ARNDSTEIN, *Petitioner.*

71 Schedule A. (5).
Form 455.

Stationers, H. K. Brewer & Co., New York,
35 Nassau Street, 58 Liberty Street, 306 Madison Avenue.

SCHEDULE A.

(5) *Accommodation Paper.*

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser, thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residence (if unknown, that fact must be stated.)	Names and residence of persons accommodated.	Place where contracted.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount.
	None.....	None.....	None.....	None.....	None	None

Total 0000

JULES W. ARNDSTEIN, *Petitioner.*

72 Oath to Schedule A.
No. 456.

H. K. Brewer & Co., Incorporated,
58 Liberty Street—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

Oath to Schedule A.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10 day of June A. D. 1920, before me personally came Jules W. Arndstein the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this 10 day of June A. D. 1920.

——— ———,
——— ———.

Schedule B (1)—Form 457.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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SCHEDULE B.

(1) *Statement of All Property of Bankrupt.*

Real Estate.

Location and description of real estate owned by debtor, or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value.
	None	None	None
		Total	00.00

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (2).
Form 458.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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SCHEDULE B.

(2) *Personal Property.*

a.—Cash on hand, none	None	00.00
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately), none	None.	
c.—Stock in trade in no business of ——, at —— value of	None.	
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz., wearing apparel nominal		00.00
e.—Books, prints, and pictures, viz	None.	
f.—Horses, cows, sheep and other animals (with number of each) viz.	None.	
g.—Carriages and other vehicles, viz	None.	
h.—Farming stock and implements of husbandry, viz	None.	
i.—Shipping and shares in vessels, viz	None.	
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz	None.	

l.—Patents, copyrights and trade-marks, viz..... None.

m.—Goods or personal property of any other description, with the place where each is situated, viz..... None.

Total 00.00

JULES W. ARNDSTEIN,
Petitioner.

75 SCHEDULE B.

(3) *Choses in Action.*

Schedule B (3). H. K. Brewer & Co., Stationers, 35 Nassau St., 58 Liberty St. and 503 Fifth Avenue, N. Y. Form 459.

a.—Debts due petitioner on open account..... None.

b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds..... None.

c.—Policies of insurance..... None.

d.—Unliquidated claims of every nature, with their estimated value. None.

e.—Deposits of money in banking institutions and elsewhere.....Pacific Bank, 49th Street Branch.. 18,000.00

Total 18,000.00

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (4).
Form 460.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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Schedule B (4).

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Supposed value of my interest.
Interest in land	None.	
Personal property	None.	
Property in money, stock, shares, bonds, annuities, etc	None.	
Rights and powers, legacies and bequests	None	00.00
	Total	

Property heretofore conveyed for benefit of creditors.

		Amount realized from proceeds of property conveyed.
What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.....	None.	
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.....	None	00.00
	Total....	

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (5).
Form 461.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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SCHEDULE B (5).

A particular statement of the property claimed as exation; and if any portion of it is real estate, its location, to bankruptcy, giving each item of property and its valuempted from the operation of the acts of Congress relating description and present use.

	Valuation.
Military uniform, arms, and equipments.....	None.
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.	
Total....	

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (6).
Form 462.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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SCHEDULE B.

(6) *Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.*

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books. None.

Deeds. None.

Papers. None.

JULES W. ARNDSTEIN,
Petitioner.

Oath to Schedule B.
No. 463.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

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Oath to Schedule B.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10th day of June, A. D. 1920, before me personally came Jules W. Arndstein the person mentioned in and who subscribed to the foregoing schedule, and who being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this 10 day of June, A. D. 1920.

——— ———.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

Summary—Form 464.

0 & 81 *Summary of Debts and Assets.*

[From the Statements of the Bankrupt in Schedules A and B.]

chedule A....	1	(1) Taxes and debts due United States	None
" "...	1	(2) Taxes due States, counties, districts and municipalities	
" "...	1	(3) Wages	
" "...	1	(4) Other debts preferred by law.	
chedule A....	2	Secured claims	14,500.
chedule A....	3	Unsecured claims	
chedule A....	4	Notes and bills which ought to be paid by other parties thereto	
chedule A....	5	Accommodation paper	
		Schedule A, total...	14,500.00
chedule B....	1	Real-Estate	
chedule B....	2-*a*	Cash on hand	
" "...	2-b	Bills, promissory notes and securities	
" "...	2-*c*	Stock in trade.....	
" "...	2-*d*	Household goods, &c.....	
" "...	2-*e*	Books, prints and pictures..	
" "...	2-*f*	Horses, cows and other animals	
" "...	2-*g*	Carriages and other vehicles	
" "...	2-*h*	Farming stock and implements	
" "...	2-*i*	Shipping and shares in vessels	
" "...	2-*k*	Machinery, tools, &c.....	
" "...	2-*l*	Patents, copyrights and trade-marks	
" "...	2-m	Other personal property....	
chedule B....	3-*a*	Debts due on open accounts	
" "...	3-*b*	Stocks, negotiable bonds, &c.	
" "...	3-*c*	Policies of insurance.....	
" "...	3-*d*	Unliquidated claims	
" "...	3-*e*	Deposits of money in banks and elsewhere	18,000.00

Schedule B.... 4	Property in reversion, remainder, trust, &c.....	
Schedule B.... 5	Property claimed to be excepted	
Schedule B.... 6	Books, deeds and papers...	
	Schedule B, total...	18,000.00

82 United States District Court, Southern District of New York.

In the Matter of NICHOLAS ARNDSTEIN, Bankrupt.

Motion to Punish for Contempt.

Saul S. Myers, Solicitor for Trustee; Selden Bacon, Counsel.
William J. Fallon, Solicitor for Bankrupt; James M. Osborne, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The Bankrupt has refused to answer questions relating to his property, asserting his constitutional privilege. I have no doubt that the answers might furnish information which would render him liable to prosecutions in the federal courts for concealment of assets, to which prosecutions alone the privilege extends. Ensign v. Commonwealth, 227 U. S. 592.

However undesirable it may be that the Bankrupt should be exempt from examination as to the disposition of his property, I find the overwhelming weight of authority sustains the asserted privilege. Indeed, only one case of importance (Mackel v. Rochester, 102 Fed. at p. 317) seems to deny it, and there the court based its decision upon Brown v. Walker, 161 U. S. 591, where the statute gave a broader immunity than Sec. 7 (9) of the Bankruptcy Act. In this district, various decisions uphold the privilege. In re Shera, 114 Fed. 207; In re Feldstein, 103 Fed. 269; In re Kanter, 117 Fed. 356. See also Carey v. Donohue, 209 Fed. 328, at p. 332, where the Court of Appeals of the Sixth Circuit sustained the bankrupt's right to refuse to answer. See also in re Scott, 95 Fed. 815; in re
83 Rosser, 96 Fed. 305; In re Nachman, 114 Fed. 995; United States v. Goldstein, 132 Fed. 789; In re Walsh, 104 Fed. 518; United States v. Rhodes, 212 Fed. 518.

In view of the foregoing body of authority, I must sustain the privilege.

The decisions of the Supreme Court in Matter of Harris, 221 U. S. 274, and Johnson v. United States, 228 U. S. 457, in my view distinctly involve the existence of a general privilege on the part of the bankrupt. Justice Holmes said that he could not prevent the use of his books in a criminal proceeding because they no longer belonged to him and were not produced by him, but by the trustee. The opinion reads:

"A party is privileged from producing the evidence but not from its production. The transfer by bankruptcy is no different from a transfer by execution of a volume with a confession written on the fly leaf. * * *

"It is true that the transfer of the books may have been against the defendant's will, but it is compelled by the law as a necessary incident to the distribution of his property, not in order to obtain criminal evidence against him. Of course a man cannot protect his property from being used to pay his debts by attaching to it a disclosure of crime. If the documentary confession comes to a third hand alio intuitu, as this did, the use of it in court does not compel the defendant to be a witness against himself."

If the bankrupt had possessed no general privilege under the Fifth Amendment, why was all this refinement of reasoning necessary to sustain the use of his books before the Grand Jury in Johnson v. United States, supra.

The motion to punish for contempt is denied.

A. N. H., *D. J.*

June 28, 1920.

84 United States District Court, Southern District of New York.

#595.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Fallon & McGee, Attorneys for Bankrupt.
Saul S. Myers, Attorney for Petitioning Creditors.

AUGUSTUS N. HAND, *District Judge:*

It is the rule in this District that a bankrupt who has filed schedules is subject to examination as to the property embraced therein. He asserts not only that he has the property scheduled, but also that he has no other property. See

In re Tobias, 215 Fed. 815.
In re Bendheim, 180 Fed. 918.

It is contended on behalf of the bankrupt that he filed his schedules in this case under compulsion because of the motion made to compel him to file them. Inasmuch, however, as he made no claim of privilege in respect to the filing of chedules, the above mentioned rule stands, and he is subject to examination in regard to what is contained in them, and also as to whether he has any other property.

Judge Learned Hand remarked in his opinion in the case
85 of In re Tobias, Supra:

" * * * it is as if the bankrupt had sworn on the examination itself: 'I have no property except Whiteacre.' He could not

stop the inquiry with that answer, but would be open to further search designed to test the truth."

It may be argued that stolen property is not an asset of the bankrupt estate and that the questions in regard to securities which are thought to have been stolen from the surety companies should be disallowed on the ground that their only effect would be to incriminate the witness. The proceeds of this property which may have reached the bankrupt would be payable to his trustee even though they were subject in the hands of the trustee to equitable liens in favor of the owners of the original securities which would consume such proceeds. Moreover, the securities themselves might become in every sense assets of the estate if the owners by waiving the tort for conversion should prove as creditors in bankruptcy. I think, therefore, that the examination in regard to those securities should not be stopped upon any theory that neither they, nor their proceeds, could belong to the bankrupt estate. It is a fact, however, that an attempt to require the delivery to the trustee of the specific securities referred to in the petition on the ground that the bankrupt has not accounted for them cannot succeed, at least, at the present time because it does not appear that they belonged to the estate.

Moreover the application that the bankrupt turn over to the
86 trustee the $500 which he says his wife gave him, cannot succeed, for it is not apparent that this money was given him prior to the date of the filing of the petition. If the trustee wishes to examine him further about this money he may do so.

In respect to the questions asked the bankrupt, I will order him to answer all the questions in Schedule A, except 3 and 8;

All the questions in Schedule B;

All the questions in Schedule C, except 6 and 40;

All the questions in Schedule D, except 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271;

All the questions in Schedule E, except 43, 44 and 56.

Settle order on notice.

A. N. H., *D. J.*

August 10th, 1920.

87 EXHIBIT H.

At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the United States Court and Post Office Building, in the Borough of Manhattan, in the City of New York, on September 1st, 1920.

Present: Hon. A. N. Hand, District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Directing Bankrupt to Answer Questions.

An order having been made herein on June 1st, 1920 requiring the Bankrupt to show cause why he should not be punished for con-

tempt of court for his refusal to answer certain specified questions and why he should not be required to turn over to the Trustee in Bankruptcy herein certain sums of money and certain specified securities and why he should not be punished for contempt of court for failure to file schedules herein.

Now, on reading and filing the said order to show cause and the affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1st, 1920, in support thereof and the proof of the service thereof thereon endorsed; and,

88 On reading, in support of the said motion, the following papers on file herein in the office of the Clerk of the above named Court, to wit, the petition for the involuntary bankruptcy of the said Arnstein, in order adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sect. 21-A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners, all specified in the order to show cause, and also the schedules filed herein by the Bankrupt on the 10th day of June, 1920, of his assets and liabilities.

And after hearing Selden Bacon and Saul S. Myers, Esqs., of counsel for the Trustee in Bankruptcy herein in support of the said motion and William J. Fallon and James W. Osborne, Esqs., of counsel for the Bankrupt, in opposition,

And on due proof of due service of said motion papers it is, on motion of Saul S. Myers, attorney for said Trustee,

Ordered, 1. That the motion to punish the Bankrupt for contempt for failure to file his schedules is denied.

2. That the motion to punish the Bankrupt for contempt for failure to answer the several interrogatories put to him at the time they were put is denied.

3. That the motion to require the Bankrupt to make
89 answer to interrogatories, and to so instruct the Commissioner, is granted to the following extent, to wit: The said Bankrupt be and he hereby is ordered to answer all of the questions in Schedule A annexed to the motion papers herein except questions 3 and 8; and all of the questions in Schedule B annexed to the motion papers; and all of the questions in Schedule C annexed to the motion papers except questions 6 and 40; and all of the questions in Schedule D annexed to the motion papers except questions 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242, and 271; and all of the questions in Schedule E annexed to the motion papers except questions 43, 44 and 56. And the Commissioner before whom the examination proceeds is instructed to require proper answers to such interrogatories from the Bankrupt.

The Commissioner is further instructed to require full and proper answers from the Bankrupt to all inquiries germane to any statements made by him contained in his said schedules of assets and liabilities.

It is further ordered, 4. That the said order to show cause be and the same hereby is amended by adding the words "proceeds of the" after the word "the" at the end of the second line of subdivision "(*f*)" and that so much of the said motion as prays that the said Bankrupt turn over to the Trustee herein such proceeds of certain securities be and the same is hereby denied for the present, but with leave to renew upon further showing.

AUGUSTUS N. HAND,
U. S. D. J.

90 STATE OF ——,
County of ——, *ss:*

—— ——, being duly sworn deposes and says: That — is the —— named in the foregoing —. That — has read the same and knows the contents thereof; that the same is true of — own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters — believes it to be true.

—— ——.

Sworn to before me this — day of ——, 19—.

——— ———,
Notary Public, N. Y. Co.

[Endorsed:] District Court of the United States for the Southern District of New York. In the Matter of Nicholas Arnstein Bankrupt. Order directing bankrupt to answer questions, with notice of entry. Saul S. Myers, Attorney for Trustee, 60 Wall Street, New York. Sept. 9/20.

Sir:

Please take notice that the within is a copy order this day duly made, entered and filed in the office of the Clerk of the District Court of the U. S. for the Southern Dist. of N. Y. Dated, New York, Sept. 7, 1920.

Yours, &c.,

SAUL S. MYERS,
Attorney for Trustee.

Office and Post Office Address, 60 Wall Street, New York City.

To: Fallon & McGee, Esqs., Attorneys for Bankrupt, No. 149 Broadway, New York City.
To: Nicholas Arnstein, Bankrupt.

SIR:

Please take notice that a ——, of which the within is a copy, will be presented for settlement to Judge —— at his chambers at the

County Court House of the County of ——, on —— ——, 192—, —— o'clock.

Dated, New York, —— ——, ——.

Yours, &c.,

SAUL S. MYERS,
Attorney for —— ——.

Office and Post Office Address: 60 Wall Street, New York City.

To: —— ——.

91 At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the P. O. Building in New York City, September 14, 1920.

Present: Hon. M. T. Manton, Circuit Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Adjudging Bankrupt in Contempt.

On reading and filing the testimony of the Bankrupt herein, taken September 14, 1920, before Commissioner Gilchrist, the order of Hon. M. T. Manton dated September 14th, 1920, denying a stay and the papers upon which the said order was based, the order of Hon. A. N. Hand dated and entered September 7, 1920, directing the bankrupt to answer, and the papers upon which the said order was made, and on reading all of the other orders, papers and proceedings herein, and after hearing Saul S. Myers, Esq., for the trustee and William J. Fallon, Esq., for the Bankrupt, and it appearing that the Bankrupt was duly sworn and the questions put as directed by Hon. A. N. Hand and that the Bankrupt refused to answer the same, it is on motion of Saul S. Myers, attorney for Hon. Henry A. Gildersleeve, Trustee, ordered, adjudged and determined

First. That the said Bankrupt is guilty of a contempt of this court in having wilfully and deliberately disobeyed said lawful orders of this Court dated September 7 and September 14, 1920, respec-
92 tively and in having wilfully and deliberately refused to answer questions about his assets and liabilities and about his schedules.

Second. That the said Bankrupt, residing at No. 1 West 83rd Street, New York, be forthwith arrested by the Marshal for the Southern District of New York and brought before this Court this day, to be committed, as for the contempt aforesaid, and to be imprisoned by said Marshal until he shall have fully complied with said orders and all directions of the Special Commissioners and the Referee herein.

M. T. MANTON,
U. S. C. J.

93 [Endorsed:] 27525. District Court of the United States for the Southern District of New York. In the Matter of Jules W. Arndstein, Petitioner. Copy. Petition for a Writ of Habeas Corpus. Filed Sept. 18, 1920. U. S. Dist. Court, S. D. of N. Y. Fallon & McGee, Attorneys for Petitioner, 149 Broadway, Borough of Manhattan, New York City.

94 District Court of the United States for the Southern District of New York.

#275.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Memorandum.

The relator seeks his release by a writ of habeas Corpus contending that he is deprived of his liberty without due process of law. A petition in bankruptcy was filed against the relator on the petition of the National Surety Company. He was thereafter adjudicated a bankrupt on the 4th of March, 1920 and ordered to file schedules in triplicate as required by law, within ten days from the date thereof. In pursuance to this order, he filed his schedules mentioning his assets and liabilities. He was then subpoenaed to appear under §21A of the Bankruptcy Act for examination. He appeared. He took an oath voluntarily and when asked questions which concerned his assets, asserted his alleged Constitutional privilege, declaring his assets and liabilities. He was then subpœnaed to appear. This question was thereafter referred to Judge A. N. Hand and in an opinion filed August 10, 1920, the bankrupt was directed to answer all questions relating to Schedule B and Schedule
95 C, except Nos. 6 and 40, and all questions in Schedule D, except Nos. 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271, and all questions in Schedule E, except Nos. 43, 44 and 45. An order was accordingly entered on September 1, 1920. Judge Hand held that since the bankrupt filed his schedules, he waived any privilege he might have to refuse to answer on the ground that his answers might tend to incriminate or degrade him. This order by Judge Hand was effective when, on the 14th of September, 1920, the bankrupt was again required to appear for examination. When examined, the bankrupt again refused to answer the questions directed to be answered in the order of September 1st, and for such refusal an order was granted on September 14, 1920, adjudging the bankrupt in contempt of court. He was placed under arrest by the Marshal and immediately made this application for a writ of Habeas Corpus.

The right to a Habeas Corpus is not a substitute for an appeal. (Storti v. Mass., 183 U. S. 137; In re McKenzie, 180 U. S. 526). Nor is the relator entitled to a writ of Habeas Corpus as a matter of right or form as urged by his counsel. On this application, the relator seeks to contest the validity or the sufficiency of the petition

in bankruptcy, thus attacking it collaterally. When the petition was filed, he did not contest the petition in time, but did a day late file an answer to the petition. This answer was late and therefore has not been received as such, but the relator did not endeavor to open his default. He did file his schedules and an oath was administered to him in the proceedings and he answered some preliminary questions and refused to answer questions concerning his
96 assets and liabilities as he referred to them in his schedules.

By this procedure and conduct, he waived any objections which he might make as to the sufficiency of the petition. Further, the petition in bankruptcy cannot be attacked collaterally, even if it were demurrable or dismissible, on this application. (In re Edelstein, 149 Fed. 636; In re Clisdell, 101 Fed. 240.) The remedy which the relator should have invoked is the application to dismiss the petition in the bankruptcy proceedings. While the order of Judge A. N. Hand stands directing him to answer questions, a refusal to answer these questions is a contempt of court and therefore the order adjudging him in contempt was properly granted. If the relator felt aggrieved by Judge Hand's order, he should have proceeded by a petition to revise and seek to reverse it in the Circuit Court of Appeals. He does not do this, but urges here that he may test the question on a writ of Habeas Corpus, contending that his Constitutional rights are invaded if he be required to answer the questions. It is clear that this contention is a fallacy. I fully agree with Judge Hand's decision as to this and the cases which he cites fully support his conclusions of law.

A bankrupt who has taken part in a bankruptcy proceeding by attempting to file an answer and later to file his schedules, has waived any constitutional privileges which might be involved in answering the questions propounded. The matter is too plain in reason and in law for me to grant a writ of habeas corpus and thus permit the relator to attack the order of Judge Hand. Particularly is this so when he is afforded relief by a petition to revise if an error has been committed.

97 The application for a writ of Habeas Corpus is therefore denied, and the relator remanded to the custody of the Marshal with directions to place him in prison if he persists in his refusal to answer the questions propounded.

An order may be presented accordingly.

Dated: September 17th, 1920.

MANTON,
U. S. Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 17, 1920, 12 M.

98 At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the U. S. Court and P. O. Building in the Borough of Manhattan, in the City of New York, September 17th, 1920.

Present: Hon. Martin T. Manton, Circuit Judge, sitting as a District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order for Denying Application for Writ of Habeas Corpus, etc.

The bankrupt herein having made application for a writ of habeas corpus, now on reading and filing the petition for such writ duly verified by the bankrupt and on reading the order made herein September 14th, 1920, denying the bankrupt's motion for a stay pending appeal from the order of Hon. A. N. Hand entered September 7th, 1920, and the order entered September 15th, 1920, adjudging the bankrupt in contempt of court and directing his imprisonment and all the papers upon which the said orders were made and on reading all of the papers and proceedings herein and after hearing William J. Fallon, Esq. and James W. Osborne, Esq., counsel for the bankrupt in support of the application for writ of Habeas Corpus and Saul S. Myers, Esq., counsel for Hon. Henry A. Gildersleeve, Trustee in Bankruptcy herein, in
99 opposition, it is on motion of Saul S. Myers, Attorney for the said Trustee, ordered,

That the said application be and the same hereby is in all respects denied.

And the bankrupt having been placed in the custody of his counsel, William J. Fallon, Esq., pending the hearing and determination of the application above referred to, it is ordered,

That the said bankrupt, Nicholas Arnstein, be and hereby is remanded to the custody of the U. S. Marshal for the Southern District of New York in accordance with the order of this Court herein of date September 14th, 1920, and the said Marshal be and he hereby is directed to forthwith arrest the said bankrupt and place him in Ludlow Street jail and keep him there in conformity with said order of September 14th, 1920, as long as he persists in his refusal to answer fully the several questions propounded, and to be propounded, which questions are fully referred to and described in the order of this Court herein made by Hon. A. N. Hand, entered September 7th, 1920, or any of them, and it is further ordered,

That the said William J. Fallon be and he hereby is directed to surrender said bankrupt to the U. S. Marshal for the Southern District of New York, for imprisonment pursuant to this order, on September 20th, 1920, at 10 a. m.

MANTON,
Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 10:25 a. m.

100 District Court of the United States, for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Petition and Allowance of Appeal.

Now comes Jules W. Arndstein, the petitioner, and respectfully represents that on the 17th day of September, 1920, a judgment or order was entered by this court dismissing the petition for habeas corpus, and remanding him to the custody of the U. S. Marshal for the Southern District of New York, and your petitioner respectfully shows that in said record proceedings judgment and order in this case lately pending against your petitioner manifest errors have intervened to the prejudice and injury of your petitoner, all of which appears in the assignment of errors which is filed with this petition. Your petitioner feels that are grave doubts concerning the legality under the Constitution of the United States among other things of his restraint and detention under the order of commitment mentioned in his petition for the said writ, and desires in good faith to submit these questions to the Supreme Court for its determination.

Wherefore your petitioner prays that an appeal may be allowed him from said judgment and order to the Supreme Court of the United States, and that citation be issued as provided by law.

Dated September 28th, 1920.

FALLON & McGEE,
Attorneys for Petitioner.

149 Broadway, Borough of Manhattan, New York City.

101 The foregoing appeal prayed for is hereby allowed and the amount of the bond is fixed at the sum of $250.00.

Dated New York, September 20th, 1920.

MANTON,
U. S. Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 4 p. m.

102 United States District Court for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Assignment of Errors.

Now comes Jules W. Arndstein, the above named petitioner-appellant, by Fallon & McGee, his attorneys, and in connection with his petition for the allowance of an appeal to the Supreme Court of the United States from the order of this court entered the 17th day of September, 1920, dismissing the petition for a writ of habeas corpus, discharging this writ of habeas corpus heretofore sued out by him, and remanding him to the custody of the Marshal for the Southern District of New York, makes and files the following assignments of error, to wit.

I. That the court erred in denying said writ of habeas corpus and remanding the petitioner to custody.

II. That the court erred in holding that the petitioner was not unlawfully restrained of his liberty.

III. That the court erred in not holding that the petitioner was held without due process of law and in violation of his rights under the Federal Constitution.

IV. That the court erred in holding that the order made by the United States District Court for the Southern District of New York on September 16th, 1920, committing petitioner to the custody of the U. S. Marshal for the Southern District of New York for refusing to answer the questions asked him in the bankruptcy proceedings of Jules W. Arndstein, an alleged bankrupt, before U. S. Commissioner Gilchrist, was valid.

V. That the court erred in holding that petitioner was guilty of contempt in refusing to answer the questions asked him in said bankruptcy proceedings before U. S. Commissioner Gilchrist, sitting as U. S. Commissioner in said Southern District of New York.

103 VI. That the court erred in holding that the writ of habeas — was not the proper remedy in this case to release petitioner from custody.

By reason whereof this petitioner-appellant prays that said judgment and order be reversed and that he be ordered discharged.

Dated September 20th, 1920.

FALLON & McGEE,
Attorneys for Petitioner-Appellant.

149 Broadway, Borough of Manhattan, New York City.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 4 P. M.

104 UNITED STATES OF AMERICA, *ss:*

To Saul S. Myers, Attorney for the trustee in bankruptcy; Alexander Gilchrist, Jr., Clerk of the District Court of the United States, Southern District of New York; Thomas D. McCarthy, Marshal for the Southern District of New York, by the Honorable one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit; to the United States of America:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Jules W. Arndstein is the appellant and you are the appellee, to show cause, if any there be, why the judgment and final order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand and seal, at the Borough of Manhattan, in the City of New York, in the District and Circuit above mentioned, this 20th day of September, in the year of our Lord One Thousand nine hundred and twenty and of the Independence of the United States One hundred and forty-fifth.

[Seal of the District Court of the United States, Southern District of N. Y.]

MANTON,
U. S.
Judge of the [District] Court of the United States for the Southern District of New York, in the Second Circuit.*

105 [Endorsed:] 27525. District Court of the United States for the Southern District of New York. In the Matter of Jules W. Arndstein, petitioner. Citation. U. S. District Court, Filed Oct. 7, 1920, S. D. of N. Y. Fallon & McGee, Attorneys for Petitioner, 149 Broadway, Borough of Manhattan, New York City. Copy received. Saul S. Myers, Att'y for Trustee. Oct. 7, 1920.

[*Word enclosed in brackets erased in copy.]

106 UNITED STATES OF AMERICA,
Southern District of New York, ss:

In the Matter of JULES W. ARNDSTEIN, Petitioner.

I, Alexander Gilchrist, Jr., Clerk of the District Court of t
United States of America for the Southern District of New York, d
hereby Certify that the foregoing is a correct transcript of the recor
of the said District Court in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court
be hereunto affixed, at the City of New York, in the Southern Di
trict of New York, this Seventh day of October, in the year of ou
Lord one thousand nine hundred and Twenty, and of the Indepen
ence of the said United States the one hundred and forty-fifth.

[Seal of the District Court of the United States, Southern
District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

[Endorsed] United States Supreme Court. In the Matter
Jules W. Arndstein, Petitioner. Transcript of record. Appeal fro
the United States District Court for the Southern District of Ne
York.

Endorsed on cover: File No. 27,932. S. New York, D. C. U.
Term No. 575. Jules W. Arndstein, appellant, vs. Thomas
McCarthy, United States Marshal for the Southern District of N
York. Filed October 8th, 1920. File No. 27,932.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 575

JULES W. ARNDSTEIN, *Appellant,*

vs.

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York.

MOTION TO ADVANCE.

To the Honorable Justices of the
Supreme Court of the United States:

Now comes the appellant herein, by his counsel, and respectfully moves that this Honorable Court order that this cause, which is here on direct appeal in habeas corpus from a final decision of the United States District Court for the Southern District of New York, refusing to issue the writ, be summarily advanced for hearing.

Appellant was committed to jail as punishment for an alleged civil contempt by virtue of an order of the United States District Court for the Southern District

of New York for refusing to answer certain questions propounded to him by the attorney for the trustee on cross examination in an involuntary bankruptcy proceeding in that court.

His refusal to answer the questions was based upon the ground that to do so might tend to incriminate him, and at the time of his refusal three indictments were pending against him in the State of New York.

He applied for a writ of habeas corpus before the United States District Court for the Southern District of New York on the ground that the order of the District Court, committing him to jail, was unconstitutional, in that it deprived him of his liberty without due process of law in violation of the Federal Constitution; that the order, being unconstitutional, was, therefore void; and being so, the Court was without jurisdiction to issue it. The judge of the District Court denied the writ, and allowed an appeal upon which the cause is now before this Honorable Court.

Appellant has been denied bail, and still remains incarcerated in the New York jail in the custody of the United States Marshal for the Southern District of New York.

Under these circumstances appellant respectfully moves that this cause be advanced for a summary hearing in this Court.

Respectfully submitted,

William J. Fallon,
George L. Boyle,
Rufus S. Day,
Counsel for Appellant.

BRIEF IN SUPPORT OF MOTION TO ADVANCE.

Section 761 of the United States Revised Statutes provides:

> "The Court of Justice, or Judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments and thereupon dispose of the party as law and justice require."

We deem it only necessary to quote from the language of Mr. Justice Brewer in delivering the opinion of this Court, construing this section in the case of *Storti* v. *Massachusetts*, 183 U. S. 138, 143:

> "That mandate is applicable to this court whether it is exercising its original or appellant jurisdiction. Proceedings in habeas corpus are to be disposed of in a summary way. The interests of both the public and the petitioner require promptness; that if he is unlawfully restrained of his liberty it may be given to him as speedily as possible; that if not, all having anything to do with his restraint be advised thereof, and the mind of the public be put at rest, and also if further action is to be taken in the matter it may be taken without delay. Especially is this true when the habeas corpus proceedings are had in the courts of a jurisdiction different from that in pursuance of whose mandate he is detained. This matter of promptness is not peculiar to these cases in Federal Courts, but is the general rule which obtains wherever the common law is enforced. It is one of those things which give to such proceedings their special value, and is enforced by statutory provisions, both State and Federal. The command of the Section is 'to dispose of the party as law and justice require.' All the freedom of

> equity procedure is thus prescribed; and substantial justice, promptly administered, is ever the rule of habeas corpus."

Rule 34 of this Court provides:

> "1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed."

This being an appeal in habeas corpus from a final decision declining to grant the writ, the Rule precludes appellant from receiving bail at the hands of this Court pending final determination of the cause. In the face of the Rule, the only means available to appellant to receive the prompt administration of substantial justice, to which this Court has ruled he is entitled, is to have accorded him immediate hearing on the appeal itself.

Respectfully submitted,

WILLIAM J. FALLON,
GEORGE L. BOYLE,
RUFUS S. DAY,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 575.

JULES W. ARNDSTEIN, *Appellant*

vs.

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York.

BRIEF FOR THE APPELLANT.

WILLIAM J. FALLON,
GEORGE L. BOYLE,
RUFUS S. DAY,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES.

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No. 575.

JULES W. ARNDSTEIN, *Appellant*

vs.

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is an appeal in habeas corpus from a final decision of the United States District Court for the Southern District of New York refusing to discharge the prisoner. The District Court even refused to issue the writ.

In February, 1920, three indictments were returned against appellant by the Grand Jury, New York County, New York, said indictments being based upon appellant's alleged complicity in certain alleged bond thefts.

And appellant was released upon bail pending trial upon said indictments and has ever since remained on bail insofar as these indictments are concerned.

Subsequent to the findings of said indictments and while appellant was at liberty on bail, as aforesaid, the National Surety Company filed in the United States District Court for the Southern District of New York a petition for involuntary bankruptcy against him, copy of which petition is to be found in the record filed herein (Rec., 4), in which petition the Surety Company alleged that members of the New York Stock Exchange, Investment Houses and Banking Institutions, its bonded customers, had lost large sums of money by reason of theft by appellant.

On the same day that the petition was filed, to wit, the 20th day of February, 1920, a subpoena in bankruptcy was issued returnable February 27, 1920. On the 25th day of February, 1920, said subpoena was served by delivery to Sylvia Roma, a maid employed by Fanny Brice Arnstein, the wife of appellant. On the 4th day of March, 1920, an adjudication of bankruptcy was entered by default and an order of reference in said matter entered referring same to Seaman Miller (Rec, 6). On the 18th day of May, 1920, an order for the examination of appellant under section 21-a of the Bankruptcy Act was served and filed upon him. Thereafter and on various dates appellant was examined under section 21-a and refused to answer certain questions propounded to him by the attorney for the trustee upon the ground that said questions would tend to degrade or incriminate him. On the first day of June, 1920, an order to show cause to punish appellant for contempt was signed by Augustus N. Hand, United States District Judge, and thereafter served on appellant (Rec., 7). On June 10, 1920, pursuant to an order of the United States District Court for the Southern District of New York (Rec., 38), and under

direction of said court, schedules were filed by appellant (Rec., 40). On June 29, 1920, a decision was rendered by Judge Hand holding that appellant should not be punished for contempt and that he was privileged in refusing to answer said questions by virtue of the protection afforded him by the Constitution of the United States (Rec., 56). On June 30, 1920, a motion was heard by Judge Hand as to whether the bankrupt, appellant, should be required to testify about his schedules and whether he should not be required to turn over the proceeds of the securities set forth in the motion papers. On August 10th, 1920, a decision was handed down by Judge Hand, directing appellant to answer certain questions by reason of the fact that he had filed the schedules as ordered and directed by the Court (Rec., 57). On the 7th day of September, 1920, an order was entered in the clerk's office for the Southern District of New York, directing appellant to make answer to certain interrogatories, a copy of the order and interrogatories appearing in the record filed herein (Rec., 58). September 14, 1920, appellant appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance of the subpoena served upon him under Section 21-a of the Bankruptcy Act. Upon being asked the questions contained in schedule "C" under said order, he refused to answer said questions upon the ground that said questions would tend to degrade and incriminate him. On the 15th day of September, 1920, an order was entered by Circuit Judge Martin T. Manton, sitting as a District Judge for the Southern District of New York, committing appellant to the custody of Thomas D. McCarthy as Marshal for the Southern District of New York for his refusal to answer the questions directed to be answered by the Commissioner upon the hearing had

under Section 21-a of the Bankruptcy Act and by the subsequent order of Judge Hand of August 10, 1920 (Rec., 61). Under said order appellant was taken into custody by the said Marshal and placed in jail, where he has ever since remained.

On September 16, 1920, appellant applied to Judge Manton, sitting as a District Judge for the Southern District of New York, for a writ of habeas corpus. The said writ of habeas corpus was on the 17th day of September, 1920, denied by Judge Manton, an opinion having been handed down by him, a copy of which is printed in the record (Rec., 62).

From this judgment of the United States District Court for the Southern District of New York denying the writ, and refusing to discharge the prisoner, the case is in this Court on appeal (Rec., 65).

SPECIFICATIONS OF ERROR.

I. That the court erred in denying said writ of habeas corpus and remanding the petitioner to custody.

II. That the court erred in holding that the petitioner was not unlawfully restrained to his liberty.

III. That the court erred in not holding that the petitioner was held without due process of law and in violation of his rights under the Federal Constitution.

IV. That the court erred in holding that the order made by the United States District Court for the Southern District of New York on September 16th, 1920, committing petitioner to the custody of the U. S. Marshal for the Southern District of New York for refusing to answer the questions asked him in the bankruptcy proceedings of Jules W. Arndstein, an al-

leged bankrupt, before U. S. Commissioner Gilchrist, was valid.

V. That the court erred in holding that petitioner was guilty of contempt in refusing to answer the questions asked him in said bankruptcy proceedings before U. S. Commissioner Gilchrist, sitting as U. S. Commissioner in said Southern District of New York.

VI. That the court erred in holding that the writ of habeas was not the proper remedy in this case to release petitioner from custody (Rec., 66).

HABEAS CORPUS IS THE PROPER REMEDY.

Loveland in his work on Bankruptcy, Vol. 2, Sec. 685, states: "Where a person has been imprisoned for contempt, relief is usually sought by habeas corpus."

In In re Watts, 190 U. S., 1, the petitioner, who had been imprisoned for contempt for refusal to obey the order of the United States District Court for the District of Indiana in a bankruptcy proceeding in that court, in an appeal in habeas corpus to this court, was by this court ordered discharged; the court concluding its opinion in the following language: "We are of opinion that there was no legal evidence to sustain the convictions for contempt, and the order in each case must be Petitioner discharged."

It is clearly established that this court has jurisdiction to review an appeal in habeas corpus from the judgment of the District Court of the United States ordering the commitment of the bankrupt to jail for contempt in refusing to obey its order in a bankruptcy proceeding. And this is true notwithstanding that the court below in this case held that the appellant "should

have proceeded by a petition to revise and seek to reverse the order in the Circuit Court of Appeals." The District Judge used the following language: "If the relator felt aggrieved by Judge Hand's order, he should have proceeded by a petition to revise and seek to reverse it in the Court of Appeals. He does not do this, but urges here that he may test the question on a writ of habeas corpus, contending that his constitutional rights are invaded if he be required to answer the questions. It is clear that this contention is a fallacy."

That the bankrupt "may test the question on a writ of habeas corpus" is clearly established. That very thing was done in this court in In Re Watts, 190 U. S., *supra*.

When a person is imprisoned by a United States Court for refusing to comply with an order of that court, and such order is beyond the jurisdiction or power of the court to make, the order itself is void, and the order punishing for contempt is likewise void, and this court will, on writ of habeas corpus, discharge the person so imprisoned. Ex parte Lange, 18 Wall, 163; Ex parte Rowland, 104 U. S., 604; Ex parte Fiske, 113 U. S., 713; In re Ayres, 123 U. S., 443; In re Lane, 135 U. S., 443; In re Tyler, 149 U. S., 164; In re Bonner, 151 U. S., 242; In re McKenzie, 180 U. S., 536.

THE APPELLANT WAS AFFORDED FULL LEGAL JUSTIFICATION IN REFUSING TO ANSWER QUESTIONS WHICH HE CONSIDERED MIGHT TEND TO CRIMINATE HIM, BY VIRTUE OF THE PROVISION OF THE FIFTH AMENDMENT OF THE CONSTITUTION WHICH FORBIDS HIM FROM BEING COMPELLED "TO BE A

WITNESS AGAINST HIMSELF," AND THIS IS TRUE REGARDLESS OF SEC. 7, PARAGRAPH 9 OF THE BANKRUPTCY ACT, WHICH PROVIDES THAT "NO TESTIMONY GIVEN BY THE BANKRUPT SHALL BE OFFERED IN EVIDENCE AGAINST HIM IN ANY CRIMINAL PROCEEDINGS."

The leading case on this question is Counselman vs. Hitchcock, 142 U. S., 547, wherein this court held that under the Fifth Amendment to the Constitution of the United States, which declares that "no person * * * shall be compelled in any criminal case to be a witness against himself," where a person is under examination before a grand jury, in an investigation into certain alleged violations of the interstate commerce act of Feb. 4, 1887, 24 Stat., 379, he is not obliged to answer questions where he states that his answers might tend to criminate him, although section 860 of the Revised Statutes provides that no evidence given by him shall be in any manner used against him, in any court of the United States, in any criminal proceeding.

It further held that the meaning of the constitutional provision is not merely that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself; but its object is to insure that a person shall not be compelled, when acting as a witness in any investigation, to give testimony which may tend to show that he himself has committed a crime.

The court held that the manifest purpose of the constitutional provisions both of the States and of the United States, is to prohibit the compelling of testimony of a self-incriminating kind from a party or a witness and that the liberal construction which must

be placed on constitutional provisions for the protection of personal rights, would seem to require that the constitutional guaranties, however differently worded, should have as far as possible the same interpretation.

And the court further held that the witness, having been committed to custody for his refusal to answer, was entitled to be discharged on habeas corpus.

Mr. Justice Blatchford in delivering the opinion of the court in the Counselman case said: It remains to consider whether section 860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence or in any manner used against him or his property or estate, in any court of the United States, in any proceeding, or for the enforcement of any penalty or forfeiture. It follows, that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property in any court of the United States, in any criminal proceeding or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which

he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

"The constitutional provision distinctly declares that a person shall not 'be compelled in any criminal case to be a witness against himself;' and the protection of Section 860 is not co-extensive with the constitutional provision. Legislation can not detract from the privilege afforded by the Constitution. It would be quite another thing if the Constitution had provided that no person shall be compelled in any criminal case to be a witness against himself, unless it should be provided by statute that criminating evidence extracted from a witness against his will shall not be used against him. But a mere act of Congress cannot amend the Constitution, even if it should engraft thereon such a proviso."

Chief Justice Marshall in Burr's Trial, 1 Burr's Trial, 244, on the question whether the witness was privileged not to accuse himself, said: "If the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not."

In Boyd vs. United States, 116 U. S., 616, Mr. Justice Bradley, delivering the opinion of the Court, said: "Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of a crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power;

but it cannot abide the pure atmosphere of political liberty and personal freedom."

THE APPELLANT ARNDSTEIN DID NOT WAIVE HIS CONSTITUTIONAL RIGHT TO REFUSE TO ANSWER ANY QUESTIONS THAT MIGHT TEND TO INCRIMINATE HIM BY REASON OF HIS FILING OF SCHEDULES IN BANKRUPTCY PROCEEDINGS IN ACCORDANCE WITH AN ORDER OF THE COURT.

Judge Manton in his opinion in this case, in which he denied the writ of habeas corpus, held that a bankrupt who has taken part in a bankruptcy proceeding by attempting to file an answer and later to file his schedules, has waived any constitutional privileges which might be involved in answering the questions propounded (Rec., 62). In thus ruling, we respectfully contend, the District Judge erred.

At the time the questions were asked appellant, he was not only exposed to the danger of prosecution, he was actually under indictment, and the connection between the information which it was sought to elicit from him in the bankruptcy proceeding, and the evidence to sustain the prosecution was direct and immediate.

Appellant, in his petition for a writ in habeas corpus, states: "* * * three indictments were found against said Jules W. Arndstein by the Grand Jury of New York County. * * * That your petitioner is informed and believes that the bonds mentioned in said indictments are the same bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor

of the said Jules W. Arndstein. That your petitioner is also informed and believes that certain proceedings have been taken before the United States Grand Jury for the District of Columbia, and said Jules W. Arndstein is about to be indicted by the Federal Grand Jury as your petitioner is informed and believes, being the bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of said Jules W. Arndstein" (Rec., 3).

In Ensign vs. Pennsylvania, 227 U. S., 592, Mr. Justice Pitney, in delivering the opinion of the court, definitely distinguishes between the matter of filing schedules and that of giving testimony under the Bankruptcy Act, insofar as the privilege of the act is concerned, which provides that no testimony given by the bankrupt shall be offered in evidence against him in any criminal proceeding. Mr. Justice Pitney said: "The reliance of the plaintiffs in error, of course, is upon that part of clause 9 of the section which declares—'but no testimony given by him shall be offered in evidence against him in any criminal proceeding.' It is insisted that, in accordance with the spirit of the 5th Amendment, this should be construed as applying to the schedule required to be prepared, sworn to, and filed by the bankrupt under the provisions of the 8th clause. But as a matter of mere interpretation, we deem it clear that it is only the testimony given upon the examination of the bankrupt under clause 9 that is prohibited from being offered in evidence against him in a criminal proceeding. The schedule referred to in the 8th clause, and the oath of the bankrupt verifying it, are to be 'filed in court,' and, therefore, are, of course, to be in writing. The word 'testimony' more properly refers to oral evi-

dence. It was reasonable for Congress to make a distinction between the schedule, which may presumably be prepared at leisure and scrutinized by the bankrupt with care before he verifies it, and the testimony that he is to give when he submits to an examination at a meeting of creditors or at other times pursuant to the order of the court,—a proceeding more or less unfriendly and inquisitorial, as well as summary, and in which it may be presumed that even an honest bankrupt might, through confusion or want of caution, be betrayed into making admissions that he would not deliberately make. Full effect can be given to the clause, 'but no testimony given by him shall be offered in evidence against him in any criminal proceeding,' by confining it to the testimony given under clause 9, to which the words in question are immediately subjoined. And we think that proper interpretation requires their effect to be thus limited."

It would thus clearly appear that the mere fact that the bankrupt filed schedules, in this case, would not bar him from claiming his privilege not to testify against himself. Even the Bankruptcy Act clearly distinguishes between filing schedules and the giving of testimony by the bankrupt.

This question was definitely ruled upon in In Re Podolin, 205 Fed. 563, 567, wherein Circuit Judge McPherson, in the United States District Court for the Eastern District of Pennsylvania, said: "The referee's order of May 12, 1913, will be so modified, *ex majari cantela,* as to provide expressly that the bankrupts may omit from their schedules any reference to the transactions with Rudsky. They are still exposed to the danger of prosecution in connection with that transaction, and they should not be compelled to run

the most remote risk of having their statements used against them in such a prosecution. The connection between such statements and the evidence to sustain the prosecution is direct and immediate."

What was the character of the information which it was sought to compel appellant to disgorge upon cross-examination in the bankruptcy proceedings? Was it of such a character as to impel the court to inform the bankrupt that he was privileged in refusing to answer questions which would elicit such information from him?

Viewed in the most unfavorable light to appellant, if the District Court from the nature of the questions propounded the bankrupt could reasonably have been led to the conclusion that the questions asked were for the purpose to involve the bankrupt in the transaction concerning stolen bonds, for which he had already been indicted, the mere fact that he had filed his schedules, as ordered by the court, would not preclude him from availing himself of his privilege to refuse to answer the questions for the reason that to do so might tend to incriminate him. Podolin vs. Lescher Warner Dry Goods Co., 210 Fed. 97, opinion by Judge Gray, wherein he said: "Where the bankrupt claims his constitutional privilege under the Amendment and refuses to give the information required by the Bankruptcy Act, on the ground that it may incriminate him, it must at least appear to the court, from the character of the information sought or the questions propounded, that his claim is justified, or the bankrupt must produce facts on which he bases such claim in order that the court may judge of their sufficiency to support."

It is only necessary to refer to the record in this case to conclusively show that the questions propounded in this proceeding were such that, from the character of the information sought and the questions propounded, the appellant's claim was justified.

The court below ordered the bankrupt to answer such questions as the following:

"Did you, at any time during the past six months, hear any conversation between Gluck and Nick Cohen?" (Rec., 19, Q. 9.)

Cohen had been indicted with Arndstein for the theft of the bonds, against which the National Surety Company, the petitioner in bankruptcy, had insured the owners of the securities.

"Did you touch any stocks or bonds any time or place within the past year?" (Rec., 21, Q. 52.)

"Did you ever come to Washington with Nick Cohen?" (Rec., 21, Q. 58.)

"Have you made any statement to anyone about your affairs to anyone in the past six months?" (Rec., 22, Q. 80.)

"By what other names have you been known besides Jules Arndstein?" (Rec., 23, Q. 2.)

"Do you remember receiving some money from Nick Cohen in Washington, D. C., on or about October 13th, last?" (Rec., 24, Q. 31.)

"Did you ever receive any property of any nature, kind, or description from Joseph Gluck?" (Rec., 26, Q. 74.)

"Were you in any gambling houses in the United States within the past three months?" (Rec., 33, Q. 273.)

"Did you ever see any stocks or bonds during the past year anywhere?" (Rec., 21, Q. 51.)

"Did you ever meet Nick Cohen in Washington?" (Rec., 21, Q. 59.)

"Will you state your movements since you arrived in New York City this morning?" (Rec., 21, Q. 66.)

"How often have you seen Nick Cohen since the 10th of February this year?" (Rec., 22, Q. 74.)

"Did you ever receive any property of any kind from Nick Cohen?" (Rec., 23, Q. 10.)

"Did you ever register in any hotel outside of New York under any other name than Arnold?" (Rec., 29, Q. 166.)

"Do you know under what different names Nick Cohen has been konwn?" (Rec., 30, Q. 198.)

"Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities in October, 1919?" (Rec., 33, Q. 1.)

By ordering the appellant to answer such questions as these and to deny his petition for a writ of habeas corpus, based upon the contention that his constitutional privilege protected him from answering such questions, the court below may as well have said to the defendant: "You must answer these questions concerning your negotiations with alleged confederates under indictments now pending against you and them jointly for the theft of those bonds. Why? Because you have filed a schedule." The questions themselves are sufficient answer that the character of the information sought and the questions propounded in the bankruptcy proceeding were such that appellant was within his rights in claiming his privilege under the protection afforded him by the constitutional amendment. The ruling of the District Court is so clearly erroneous and arbitrary that a further discussion is not necessary.

CONCLUSION.

Appellant was committed to jail as punishment for an alleged civil contempt by virtue of an order of the United States District Court for the Southern District of New York for refusing to answer certain questions propounded to him by the attorney for the trustee on cross-examination in an involuntary bankruptcy proceeding in that court.

His refusal to answer the questions was based upon the ground that to do so might tend to incriminate him, and at the time of his refusal three indictments were pending against him in the State of New York.

He applied for a writ of habeas corpus before the United States District Court for the Southern District of New York on the ground that the order of the District Court, committing him to jail, was unconstitutional, in that it deprived him of his liberty without due process of law in violation of the Federal Constitution; that the order, being unconstitutional, was, therefore void, and being so, the Court was without jurisdiction to issue it. The judge of the District Court denied the writ, and allowed an appeal upon which the cause is now before this Honorable Court.

Appellant has been denied bail, and still remains incarcerated in the New York jail in the custody of the United States Marshal for the Southern District of New York.

Under these circumstances appellant respectfully urges that this court should order his discharge from his unlawful imprisonment.

Respectfully submitted,

WILLIAM J. FALLON,
GEORGE L. BOYLE,
RUFUS S. DAY.

FALLON & MCGEE,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

JULES W. ARNDSTEIN, APPELLANT,
v.
THOMAS D. MCCARTHY, UNITED STATES marshal for the southern district of New York. } No. 575.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLEE.

This is an appeal from the judgment of the District Court declining to issue a writ of habeas corpus.

THE FACTS.

Since the petition was denied, the correctness of the judgment must be determined from the facts as alleged in the petition for habeas corpus and the exhibits thereto. From these, it appears that on February 20, 1920, the National Surety Company filed a petition for involuntary bankruptcy against the petitioner, claiming to be a creditor in an amount exceeding $500. The nature of the claim was stated substantially as follows:

The National Surety Company had issued to a number of customers, who were members of the New

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York Stock Exchange, policies of insurance intended to insure such persons against loss by theft; that large sums had recently been lost by said persons by theft by petitioner; that the surety company had made good these amounts and taken an assignment of the right of action occasioned by the theft of the property (Rec., pp. 4–5); that on March 4, 1920, an adjudication of bankruptcy was entered by default; that on the 18th of May, 1920, an order for the examiner of petitioner under section 21 (a) of the Bankruptcy Act was served and thereafter, on various dates, he was examined and refused to answer certain questions upon the ground that to do so would tend to degrade or incriminate him; that thereafter a hearing was had before Judge Hand on an order to show cause why he should not be punished for contempt; that not having then filed any schedules, Judge Hand ruled that he could not be compelled to answer the questions and declined to punish for contempt, but ordered him to file schedules; that later he did file schedules in which the only property scheduled was a deposit of $18,000 in a bank; that thereafter Judge Hand ruled that, having filed these schedules, he was subject to examination with respect thereto and ordered him to answer certain of the questions which had previously been propounded; that upon his refusal to answer these questions he was committed for contempt. To be relieved of this imprisonment, he sought a writ of habeas corpus. The writ was denied upon the ground that having failed to claim the privilege of declining to file sched-

ules upon the ground that the disclosures made by them and the examination to which they subject him would tend to incriminate him he could not refuse to answer proper questions propounded for the purpose of testing the truth of the schedules as filed.

It appears that another witness, in the course of his examination in the bankruptcy court, had testified with respect to a large number of securities having been delivered to the petitioner within a short time before the bankruptcy proceedings. The inference is that these were securities which had been stolen and for which the surety company had been compelled to make compensation under its policy of insurance. From the portions of the testimony appearing in this record it does not distinctly appear whether this inference is correct. It does appear, however, from the testimony of the witness that within a short time before the bankruptcy proceedings the petitioner was in possession of these securities and disposed of them, or some of them, and received the proceeds. (Rec., pp. 8–19.) The inquiry with respect to these securities and their proceeds was therefore proper in connection with the schedules as filed. The questions propounded in the main related with more or less directness to these matters. The question therefore is whether a bankrupt who files schedules in the usual form may be compelled to answer questions testing the truth of these schedules.

Assuming that the constitutional provisions against requiring one to be a witness against himself in a criminal case protect a bankrupt from being required to disclose, either in the schedules which he files or upon his examination as a bankrupt, facts which will tend to incriminate him, we have this case. Before the schedules were filed the bankrupt was examined and his attention directly called to transactions about which he declined to testify upon the ground that his testimony would incriminate him. Not having filed his schedules, he was not required to answer. With full notice, therefore, that the claim was being asserted that a full disclosure of his affairs would involve an inquiry into those transactions, he obeyed, without objection, the order to file schedules. He filed these schedules, purporting to fully disclose all his assets, and thus inviting all proper inquiries to test the truth of the statements made in his schedules. The question is, whether, after doing this, he can claim his constitutional privilege and refuse to answer further.

In addition, many of the questions which he refused to answer apparently could not have any incriminating effect. The list of questions which he was ordered to answer are set out in several schedules in the record, and embrace some 247 questions. The order of the court committing him apparently shows that all of these questions were submitted to him and that he refused to answer any of them. The petition, however, alleges that the questions set

out in schedule C (Rec., p. 23) were the ones submitted to him and which he refused to answer. On this application, of course, the averments of the petition must be taken as true, whatever facts might appear, if the writ should be granted. Hence, it will be assumed that he was committed for refusing to answer only the questions set out in schedule C. But a large number of these questions merely inquired whether he knew some 15 or 20 different persons and whether he had had, at any time, business transactions with any of them.

It has repeatedly been held by the District Courts that a bankrupt may refuse to file schedules which will tend to incriminate him. *In re Podolin*, 202 Fed. 1014; *same*, 205 Fed. 563; *In re Bendheim*, 180 Fed. 918; *In re Tobias et al.*, 215 Fed. 815. It is equally well settled, however, that if he files the schedules he waives the privilege he might have claimed and subjects himself to all proper cross-examination related to the truth or falsity of the schedules as filed. In *In re Tobias, supra*, Judge Hand stated the rule thus:

> However, the privilege is to suppress, not to pervert, the truth; and when a bankrupt once files his schedules, he asserts not only that he has the property mentioned but that he has no more. *Johnson* v. *United States* (C. C. A. 1st Cir.), 20 Am. Bankr. Rep. 724, 163 Fed. 30, 89 C. C. A. 508, 18 L. R. A. (N. S.) 1194. That is a statement of fact as much as any other, and it should subject him to all legitimate cross-examination (Wigmore,

> section 2276), so long as it opens the way to no independent fact (*Evans* v. *O'Connor*, 174 Mass. 287, 54 N. E. 557, 75 Am. St. Rep. 316; *Low* v. *Mitchell*, 18 Me. 372). Such, at least, is the American rule. It is as if the bankrupt had sworn on the examination itself: "I have no property except Whiteacre." He could not stop the inquiry with that answer, but would be open to further search designed to test the truth.

This states a simple rule of justice. The petitioner, knowing what it would lead to, might have refused to file a schedule of his property. When he did, however, file such a schedule, and swear that the only assets that he had consisted of a certain amount of money in bank, to permit him to refuse to answer questions intended to test the truth of this statement, would be not merely to permit him to withhold facts which might incriminate him, but to actually pervert the truth with respect to facts about which he has voluntarily testified. Even if all the questions, therefore, could be said to have been such as that the answers might tend to incriminate him, he had clearly waived his privilege and could properly be compelled to answer.

In the second place, a witness is not the sole judge of whether his evidence will bring him into danger of the law—it must appear that there is reasonable ground of such danger. *Brown* v. *Walker*, 161 U. S. 591, 599. The opinion of Judge Hand in *In re Tobias, et al.*, 215 Fed. 815, 816, clearly states the law on this subject. He says:

> Moreover, the mere claim of privilege is not enough. *Podolin* v. *Lesher Warner D. G. Co.* (C. C. A. 3d Cir.), 31 Am. Bankr. Rep. 796, 210 Fed. 97. There must be some basis for the supposed fear, or the court will overrule it. No ground appears here which justifies the bankrupt's assertion of his claim. Even if there was any danger from the disclosure of his "personal outside means," he has stated his assets in his schedules, and he has waived his right as to that. As to the rest, he shows no ground at the present time to suppose that he will be incriminated by answering the other questions. At least, he must indicate what he fears the inquiry may discover, and how the answers might lead to exposure. He must, moreover, submit to full cross-examination as to his property.

In this case, the petition shows that the matter with which he feared to incriminate himself related to certain securities, about which a witness (Gluck) had testified, and in connection with which one Nick Cohn was mentioned. Even if he had not waived his privilege, some of the questions set out in schedule C were clearly such as he could be compelled to answer. Very few of the questions related directly to the stocks mentioned, and many of them make no reference to Nick Cohn or to Gluck. A large number of them merely inquire whether he knows some 15 or 20 persons. There is no indication that he had ever been connected with any of these parties, except Cohn and Gluck, in any criminal transaction. Even if there was, the mere fact that he

knew, or had met, these parties would have no tendency to incriminate him. If the question submitted had been followed by another, inquiring into a transaction that might or might nor be criminal, then, if his privilege had not been waived, he might have declined to answer. But certainly there is nothing on the face of these questions, and nothing appears from the petition, that indicates the slightest danger to him in answering either that he did or did not know these parties.

Some of the questions submitted, therefore, being clearly proper questions, even if he had not waived his privilege, he was properly committed even if he had the right to refuse to answer some of the other questions. In other words, having refused to answer all the questions, he is, in any event, properly held until he has purged himself by answering those questions as to which he would in no event have a privilege.

For the reasons suggested above, it is submitted that the writ of habeas corpus was properly denied and the judgment should be affirmed.

Respectfully,

WILLIAM L. FRIERSON,
Solicitor General.

OCTOBER, 1920.

○

Supreme Court of the United States,

OCTOBER TERM.

No. 575.

JULES W. ARNDSTEIN, Appellant.

vs.

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York.

NOTICE.

To: RUFUS S. DAY,
GEORGE L. BOYLE,
WILLIAM J. FALLON,
EUGENE F. MCGEE, Esqs.,
Counsel for Appellant,
and

To HON. WILLIAM L. FRIERSON, SOLICITOR GENERAL OF THE UNITED STATES.

PLEASE TAKE NOTICE that the annexed Petition and affidavit, verified November 15, 1920, will be submitted to the Supreme Court of the United States, at the Capitol, at Washington, District of Columbia, on Monday, November 22, 1920, at 12:00 noon or as soon thereafter as counsel can be heard and a motion made for the relief prayed for.

Dated, New York, November 15, 1920.

Yours, &c.,
FRANCIS M. SCOTT and SAUL S. MYERS,
Counsel for Henry A. Gildersleeve,
Trustee in Bankruptcy.

SUPREME COURT OF THE
UNITED STATES.

OCTOBER TERM.

No. 575.

JULES W. ARNDSTEIN, Appellant,

vs.

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York.

Petition of HENRY A. GILDERSLEEVE.

To the Honorable Judges of the Supreme Court of the United States:

The Petition of Henry A. Gildersleeve respectfully shows:

First.—Your Petitioner is the Trustee in Bankruptcy herein. Your Petitioner has been a member of the Bar of the State of New York for upwards of fifty (50) years and was for 14 years a Justice of the Supreme Court of the State of New York. Your Petitioner consented to act as Trustee in Bankruptcy herein at the request of a large body of representative surety companies and stock exchange houses, not only in this country but in England.

Second.—Your Petitioner now prays for the following relief: 7

(a) That he be allowed as such Trustee to intervene in the above entitled matter;

(b) That the appeal herein be re-argued;

(c) That the **entire** record be certified to this court;

(d) That the Mandate heretofore issued from this court to the District Court of the United States for the Southern District of New York in the Second Circuit, be recalled;

(e) That all proceedings in respect of the said Mandate be stayed until the further order of this court; and 8

(f) That such other and further relief be granted in the premises as to this court may seem just.

Third.—Your Petitioner further shows that neither he nor his counsel, Saul S. Myers, Esq., ever had any notice of the proposed argument of the appeal herein. Your Petitioner shows that the transcript of record was certified by the Clerk of the District Court of the United States for the Southern District of New York on October 7, 1920; that the case was filed in the Supreme Court of 9 the United States on October 8, 1920, as Number 575, October Term, 1920; that a motion to advance **without opposition** by the Solicitor General of the United States was submitted to the Supreme Court on October 11, 1920; that the motion was granted on October 18, 1920; that the case was assigned for argument on October 19, 1920; that the case was actually reached for argument on October 21, 1920, and was argued on that day and on the following day.

10 Your Petitioner further shows that neither he nor his said counsel, had any notice of any kind of any of the foregoing steps.

Your Petitioner further shows that on October 7, 1920, the said Messrs. Fallon and McGee left at the office of your Petitioner's said counsel, a citation, copy of which is hereto annexed and marked "Exhibit A" and your Petitioner shows that the said citation is specifically addressed to "Saul S. Myers, Attorney for the Trustee in Bankruptcy"; and your Petitioner shows that by serving the said citation upon the said Saul S. Myers, the said Messrs. Fallon and McGee intended that your Pe-
11 titioner should be represented on the said appeal, for the reason that the citation specifically states,

> "You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof."

Your Petitioner further shows that all of the proceedings to compel the Bankrupt to testify about his assets and liabilities were instituted by your Petitioner, through his said counsel, that the said Messrs. Fallon and McGee appeared in court in each and every step in the bankruptcy proceed-
12 ings; that they appeared with the said Saul S. Myers on each and every one of the motions and petitions set forth in the transcript of record herein and that in addition thereto, in September last, the said William J. Fallon appeared before Mr. Justice Brandeis on two (2) different days in support of a petition for a writ of habeas corpus and was required by that learned Justice to give notice to your Petitioner's said counsel; and that after Mr. Justice Brandeis had declined to grant a writ, the said William J. Fallon went be-

fore Hon. C. M. Hough in New York with an application for a writ and again your Petitioner's said counsel was notified of the application. A copy of the memorandum of the Hon. C. M. Hough is hereto annexed and marked "Exhibit B". 13

Your Petitioner further shows that on October 29, 1920, as soon as your Petitioner's said counsel learned that the appeal herein had been argued, he immediately wrote a letter to the Solicitor General, of which a copy is hereto annexed and marked "Exhibit C" and received an answer, of which a copy is hereto annexed and marked "Exhibit B"; and wrote a letter to the Clerk of the Supreme Court, a copy of which is hereto annexed and marked "Exhibit E", and received an answer, a copy of which is hereto annexed and marked "Exhibit F". This appears more fully from the annexed affidavit of Saul S. Myers. 14

Fourth.—Your Petitioner further shows that he is the real party in interest in this matter and that, having been cited to appear, it was not only irregular for Messrs. Fallon and McGee to bring the appeal on for hearing without notice to your Petitioner but it was likewise inadvertent for the Clerk of the District Court of the United States for the Southern District of New York to certify the record without notice to your Petitioner. The record is very incomplete as will be more fully referred to hereafter; and in support of the claim that your Petitioner is the real party in interest, your Petitioner shows that the creditors herein are either stock exchange houses or surety companies who have sustained large losses by reason of the theft of securities running into millions of dollars and it is claimed that these securities were stolen by messenger boys, schooled so to do by 15

16 the Bankrupt and his associates. Nearly all of the messenger boys have confessed, as appears in that part of the bankruptcy record which has not been certified. And it likewise appears, partly from the certified record and partly from the uncertified part of the record, that one of the messengers, namely, Joseph Gluck, handed over to the Bankrupt a large amount of securities, and it appears from the uncertified part of the record that the Bankrupt handed a large part of these very securities to one David W. Sullivan, who has likewise confessed.

17 *Fifth.*—Your Petitioner further shows that the question of law presented in this matter is not so much whether the Bankrupt may be required to testify in respect of his schedules but whether any bankrupt may refuse to testify in a bankruptcy proceeding notwithstanding his claim that the answers may tend to incriminate him.

Your Petitioner further shows that there is no suggestion that the Bankrupt has committed any Federal crime of which any answer called for would tend to incriminate the Bankrupt, save possibly the crime under the Bankruptcy Act of having concealed his assets; and the court is con-
18 fronted with the bald proposition that a bankrupt may refuse to disclose his assets and what he has done with them and what their extent, on the simple proposition **that if he did disclose his assets he might be convicted of having previously concealed them;** and he asks the court to protect him in a new crime of concealment in order to avoid possible conviction for a former crime of concealment.

The proposition is a very serious one and it is obvious that it would lead to the utter destruction of the means provided by law for the ascertain-

ment and administration of the assets of bankrupts.

In every case where a bankrupt sought to conceal assets, he would be entitled, if the Bankrupt's theory is correct, to refuse to answer any questions about his assets or business **on the ground that the present disclosure of his assets might convict him of previous concealment.** The privilege not to answer would be universal.

Not only would the privilege be one that might be exercised in **every** case, thus absolutely destroying the efficiency of the Bankruptcy Act but the more flagrant the concealment of assets, the greater the justification of the bankrupt in not answering and continuing the concealment.

Sixth.—Your Petitioner further shows that his said counsel has made a special study of this question from the time of the commencement of the Bankruptcy Proceeding in February last down to the time that the question was presented to Hon. John C. Knox, to Hon. A. N. Hand, to Hon. Martin T. Manton, and to Hon. C. M. Hough, and your Petitioner further shows that his said counsel, aided by Selden Bacon, Esq., traced the history of the law from the time of Lord Eldon in ex parte Cossens—Buck's Cases, 531 and reached the conclusion that it was never intended by the framers of the Constitution or by Congress that a bankrupt should be relieved from testifying fully and frankly about his assets and his liabilities.

Seventh.—Your Petitioner further shows that the brief of the Solicitor General, while indeed very able, is limited to the one question, namely; whether the Bankrupt in this proceeding should have been required to testify about his schedules

22 after he had previously claimed that to answer any question in the proceeding might tend to incriminate him; this is undoubtedly due to the fact that the record from which the Solicitor General argued, was incomplete inasmuch as that, among other things there was not printed in the said record the testimony given by the appellant Arnstein before Special Commissioner Gilchrist in the Bankruptcy proceeding, which testimony was recited in the order appealed from and the previous order of Sept. 1st, 1920, instructing the said Arnstein to answer certain questions, and the testimony of Joseph Gluck and David W. Sullivan, who testi-
23 fied to the circumstances under which the said Arnstein received and disposed of many of the securities which are alleged to have been stolen, for this court says, in its opinion:

> "It is impossible to say on mere consideration of the questions propounded, in the light of the circumstances disclosed, that they (the questions) could have been answered with entire impunity."

Eighth.—Your Petitioner further shows that the Mandate was transmitted to the District Court of the United States for the Southern Dis-
24 trict of New York immediately. Your Petitioner further shows that upon the Mandate reaching New York, to wit, on November 10, 1920, the Mandate was presented to Hon. J. M. Mayer with the request that he sign an order making the order of the Supreme Court the order of the District Court. Thereupon, the Hon. J. M. Mayer notified your Petitioner's said counsel to be present in court and your Petitioner's said counsel appeared with Hon. Francis M. Scott and, at the suggestion of Judge Scott, the said Arnstein was paroled in

the custody of his counsel, William J. Fallon, and 25
the matter was adjourned to November 24, 1920, in order to enable your Petitioner to present this petition.

Ninth.—Your Petitioner further shows that the Mandate requires the United States Marshal for the Southern District of New York to pay the costs of the proceeding and your Petitioner has been informed by his counsel that the said Marshal has no funds with which to pay the same and that the Mandate in this respect, at least, is incorrect.

Tenth.—Your Petitioner further shows that in 26
view of the fact that a consideration of the Mandate by the District Court has been set for the 24th instant, this matter be heard at the earliest date possible and your Petitioner therefore prays that the relief herein petitioned for be granted; that the Mandate be recalled and the whole record certified and your Petitioner granted leave to intervene and to present the brief herewith submitted, and to re-argue the appeal.

And your Petitioner will ever pray, etc.

Dated, New York, November 15, 1920.

HENRY A. GILDERSLEEVE, 27
Trustee in Bankruptcy.

FRANCIS M. SCOTT, and
SAUL S. MYERS,
Counsel for the Trustee in Bankruptcy.

28 STATE OF NEW YORK }
City and County of New York } ss.:

HENRY A. GILDERSLEEVE, being duly sworn, says that he is the petitioner in the above entitled action; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HENRY A. GILDERSLEEVE.

Sworn to before me this
15th day of November, 1920.
29 A. MALES,
Notary Public,
Bronx County.

30

A

UNITED STATES OF AMERICA, ss.:

To Saul S. Myers, Attorney for the Trustee in Bankruptcy;

Alexander Gilchrist, Jr., Clerk of the District Court of the United States, Southern District of New York;

Thomas D. McCarthy, Marshal for the Southern District of New York, by the Honorable one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit;

To the United States of America:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Jules W. Arnstein is the appellant and you are the appellee, to show cause, if any there be, why the judgment and final order rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand and seal, at the Borough of Manhattan, in the City of New York in the District and Circuit above mentioned, this 20th day of September, in the year of our Lord One Thousand nine hundred and twenty and of the Independence of the United States One hundred and forty-fifth.

MANTON,
Judge of the U. S. Court of the United States for the Southern District of New York, in the Second Circuit.

34 B

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The application of JULES W. ARNDSTEIN, petitioner, for a
35 writ of *habeas corpus* directed to Thomas D. McCarthy, U. S. Marshal for the Southern District of New York.

MEMORANDUM.

Certain papers have been submitted to me containing a petition for a writ of *habeas corpus* directed as above and entitled in the Supreme Court of the United States and formally addressed to the
36 "Judges of the Supreme Court of the United States."

I take it that the application is made to me merely as a United States Judge, and that it makes very little difference in substance what may be the caption or form of the proceeding.

Revised Statutes Section 755 requires the Judge to whom an application is made to award the writ "unless it appears from the petition itself that the party is not entitled thereto."

From the papers attached to the petition or 37
from the papers on file in this Court and referred to in the petition, the following appears: On August 10, 1920, Arnstein was directed by Judge Augustus N. Hand to answer certain questions put to him in a bankruptcy proceeding.

The reasons given by Judge Hand for this direction are substantially those some time ago set forth in another case by Judge Learned Hand, **In Re Tobias,** 215 Fed. Rep. 815.

Arnstein refused to comply with this direction of the Court and answer the questions or any of them, but I cannot ascertain from the records of the District Court for the Southern District that 38
he has ever taken any appellate proceedings to review Judge A. N. Hand's direction. Having persisted in his refusal as aforesaid, Arnstein was on or about the 15th day of September, 1920, committed as for a contempt by Judge Martin T. Manton.

Immediately upon such commitment he petitioned for a writ of *habeas corpus,* which was refused for reasons set forth at length in an opinion filed by Judge Manton on September 17, 1920. I am informed, but there is no record evidence thereof before me, that since that date efforts have been made by Arnstein to obtain other writs of 39
habeas corpus or enlargement upon bail from the Circuit Justice.

The papers supporting this petition show conclusively that the one legal question raised throughout by Arnstein is that by requiring him to answer certain questions and committing him for not answering his constitutional rights have been invaded.

This is a mere question of law which has now been several times argued in this very proceeding

40 and as to which I fully agree with my colleagues. I am therefore of opinion that it appears from the petition itself that Arnstein is not entitled to the *habeas corpus* prayed for and the application therefor is denied.

C. M. HOUGH,
C. J.

Sept. 24, 1920.

Endorsed: U. S. District Court, S. D. of N. Y., Filed Sep 25, 1920.

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C 43

—copy—

October 29, 1920.

Hon. William L. Frierson,
Solicitor General of the United States,
Department of Justice,
Washington, D. C.

My dear Mr. Frierson:—

In re Jules W. Arnstein

In the above entitled bankruptcy proceeding, I represent the leading Surety Companies and 44
Stock Exchange houses as well as the Trustee in Bankruptcy, Hon. Henry A. Gildersleeve.

My attention has just been called to the fact that the appeal from Judge Manton's order in this matter was disposed of by the Supreme Court of the United States on the 22nd and 25th inst.

I had no notice of the matter of any kind except that on the 7th inst. a citation was left at this office, a copy of which is hereto annexed, marked Exhibit A.*

I will thank you to send me by registered mail—special delivery—at my expense, a copy of your brief and a copy of your adversary's brief; and I 45
beg to inquire whether your adversary was not required to give me notice. I do not know what the practice is, but I would have been glad to have had the opportunity of appearing with you and of submitting a brief along the lines of Lord Eldon's opinion in the case of Ex parte Cossens, Buck's Cases 531.

Awaiting your reply, and with best respects, I am

Very truly yours,

SSM-AML Saul S. Myers.
(Enc.)

* This is Exhibit A of the present record.

46 D

—copy—

WLF-TGB.

DEPARTMENT OF
JUSTICE

OFFICE OF THE SOLICITOR GENERAL,

Washington, D. C.

OCTOBER 30, 1920.

MR. SAUL S. MYERS,
47 60 Wall Street,
New York, N. Y.

DEAR SIR:

I am in receipt of your letter inquiring about the Arnstein *habeas corpus* case. The case was advanced by the Supreme Court and argued on October 22nd, but no decision has yet been announced. In compliance with your request I am sending you under a separate cover, a copy of my brief and that of opposing counsel.

Of course, the only defendant to this case was the United States Marshal who had Arnstein in
48 custody and I do not, therefore, know that our opponents were under any obligation to give this notice.

Respectfully,
WM. L. FRIERSON,
Solicitor General.

P. S.

I am sending the above mentioned briefs by Special Delivery and enclose the balance of the stamps.

Enc. 12786.

E 49

—c o p y—

OCTOBER 29, 1920.

HON. JAMES D. MAHER,
Clerk, United States Supreme Court,
Washington,
D. C.

MY DEAR MR. MAHER:—

In re Jules W. Arnstein

My attention has been called to the fact that on the 22nd and 25th inst. the appeal in the above matter came on for argument and was disposed of. 50
The only notice I had of any such proceeding was a citation left at this office on the 7th inst., a copy of which is hereto annexed marked Exhibit A.* I had no other notice of any nature, kind or description.

Will you therefore be kind enough to take the matter up with the Chief Justice and ascertain whether it is not possible for me to have an opportunity to submit a brief? I have not seen the briefs of the appellant or of the Solicitor General, but I desire to particularly point out to the Court that in a bankruptcy proceeding a bankrupt may not claim that he can refuse to testify on the 51
ground that the answers may tend to incriminate him. I refer particularly to the opinion of **Lord Eldon** in the case of **Ex parte Cossens,** Buck's Cases 531.

In this proceeding, I represent the leading Surety Companies and Stock Exchange houses in this city, and Mr. Fallon well knew that I was in the matter because he twice tried to get a writ of *habeas corpus* from Judge Brandeis and each time he was instructed by Judge Brandeis to give me notice of the proceeding.

With best respects, I am

SSM—AML Very truly yours,
(ENC.) SAUL S. MYERS.

52 —copy—

F

OFFICE OF THE CLERK,

SUPREME COURT OF THE
UNITED STATES,

WASHINGTON, D. C.

October 30, 1920

SAUL S. MYERS, Esq.,
53 New York City.

Dear Sir:—

Your letter of the 29th instant, enclosing a copy of the citation served on you in the case of Arnstein *v.* McCarthy, No. 575, October Term, 1920, duly received, and I return the copy of the citation herewith.

This case was filed October 8th, 1920, as No. 575, October Term, 1920. A motion to advance with consent was submitted to the court on October 11th, and the motion granted October 18th, and the case assigned for argument on Tuesday, Oc-
54 tober 19th. The case was actually reached for argument on October 21st, and argued that day and the following day, and is now under advisement. I send you by same mail a set of the printed papers in the case. It is now too late for you to file a brief without the consent of the court. I cannot undertake to take up the matter with the Chief Justice. The case was ably argued by the Solicitor General for the appellees.

Yours truly,
JAMES D. MAHER, Clerk.
By M. R. S., Ass't.

TFD.

SUPREME COURT OF THE UNITED STATES. 55

OCTOBER TERM.

No. 575.

JULES W. ARNSTEIN, Appellant,

vs.

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York. 56

AFFIDAVIT OF SAUL S. MYERS.

STATE OF NEW YORK, }
City & County of New York, } ss.:

SAUL S. MYERS, being duly sworn, deposes and says:

1. I am the attorney of record for the Trustee in Bankruptcy herein and have had entire charge of this proceeding. 57

2. I have read the annexed Petition of Hon. Henry A. Gildersleeve, verified November 15, 1920. All of the statements of fact therein contained based upon knowledge and information obtained by me and transmitted to the said Trustee, are correct in every particular. I had no notice of the appeal before the United States Supreme Court except as stated in the said Petition. I at-

tended before Hon. John C. Knox, Hon. A. N. Hand, Hon. Martin T. Manton, Hon. C. M. Hough and before Mr. Justice Brandeis and the statements in the said Petition as to what took place before those justices is absolutely correct. I know, of my own knowledge, that the letters referred to Exhibits C, D, E and F were sent and received as stated in the said Petition. It is likewise true as stated in the said Petition, that, assisted by Selden Bacon, Esq., of the New York Bar, I made a special study of the constitutional questions involved in this matter. It is likewise true that Judge Scott and I appeared before Hon. J. M. Mayer as stated in the said Petition. The said Selden Bacon is now in London.

SAUL S. MYERS.

Sworn to before me
November 15, 1920.
A. MALES,
Notary Public,
Bronx County.

Supreme Court of the United States

OCTOBER TERM.

JULES W. ARNDSTEIN,
Appellant,
against
THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York,
Respondent.

#575.

SUPPLEMENTARY AFFIDAVIT OF HENRY A. GILDERSLEEVE AND COPY OF TESTIMONY OF BANKRUPT.

State of New York,
City and County of New York, } ss.:
Southern District of New York,

Henry A. Gildersleeve, being duly sworn, deposes and says:

I am the Trustee in Bankruptcy herein, and as such I executed the petition for intervention for the certification of the whole record and for reargument, which petition was dated November 15th, 1920. In the course of that petition I referred (fol. 22) to the fact that "there was not

printed in the said record the testimony given by the appellant Arnstein before Special Commissioner Gilchrist in the Bankruptcy Proceedings."

I am handing up herewith the entire testimony of the said Arnstein. I wish in this affidavit to call attention particularly to a few items thereof. These items will show:

I. That Arndstein specifically and voluntarily denied having any stocks, bonds or other concealed assets.

II. That Arnstein's attention was called at the very opening of the examination to his privilege against answering incriminating questions and that he had counsel from the outset.

I.

On page 15, under date of May 15, 1920, Arndstein was asked and answered as follows:

> "Q. Have you any stocks or bonds now? A. I never had any in my life. I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed one in my life, any negotiable stock."

On page 34 (the same date) the witness was asked and answered as follows:

> "Q. Did you ever have any stocks or bonds in your possession or under your control at any time during the past year? A. I never owned a share of stock; I never had a share of stock that was good, to my knowledge, in my life.

Q. What do you mean by 'good'? A. Well, anything that was negotiable.

Q. What? A. Negotiable.

Q. Did you have any that were not negotiable? A. Yes; I bought some years ago.

Q. We are talking about the past twelve months. A. No, sir.

Q. Have you had any stocks or bonds in your possession or under your control at any time during the last year? A. I just answered that."

At pages 37 to 38 of the testimony of the same day the witness was shown a list of stocks and bonds and was asked:

"Q. • • • Did you ever see any of those shares of stocks or bonds mentioned on this list • • •?"

and he answered: "No, sir."

For other illustrative denials of the possession and disposition of property see pages 13, 14, 15, 20, 21, 26, 34-35 (testimony of May 15, 1920); pages 2360, 2363, 2386, 2388 and 2389 (testimony of May 24th, 1920).

On September 14th the witness, when asked whether he "never had" in his "possession" or under his "control" a single share of stock or bond mentioned in the list earlier submitted to him, specifically referred to his earlier testimony. (See testimony of September 14th, page 2493.)

At the commencement of the very first examination, that of May 15th, the bankrupt was properly

and completely advised of his constitutional privilege to refuse to answer any question which in his personal judgment should tend to incriminate or degrade him. He was instructed by the Commissioner how to state his objection and was asked by the Commissioner if he understood the instructions. He was pointedly told that the decision as to whether any such question would incriminate or degrade him rested with him, and him alone. The gist of this warning is contained in the words of the Commissioner at the opening of this same hearing (at page 3):

> "I have so stated. That any question that is asked, the answer to which will tend to incriminate or degrade you, you can decline to answer upon that ground, stating the ground. Do you understand, Mr. Arndstein, the instructions? Any question which is asked you, the answer thereto which in your judgment will tend to incriminate or degrade you, you can decline to answer, stating that you decline to answer upon the ground that it will either tend to incriminate or degrade you.
>
> The Witness: Yes, sir."

That the witness was not only thus properly advised of his privilege and how to exercise it, but that he actually so understood it and made use of it, is shown in innumerable instances. An examination discloses that the overwhelming majority of all questions put to the bankrupt at this hearing and all subsequent hearings, he refused to give any answer whatever to, explicitly stating a tendency to incriminate or degrade him as his ground.

It is perfectly apparent that throughout his examination—literally from the first moment to the last—the witness had the question of self-incrimination constantly before him.

The witness again not only had counsel from the beginning but refused to take the simplest step without the advice of counsel. At page 2 of the hearing of May 15th (the first hearing) it appears that the witness declined to answer the fifth question put to him saying—"My counsel is not here at the present time."

Mr. Myers then declared that he had supposed counsel was present and that—"I don't want to ask you any questions until he comes." "The examination," we read "was suspended." The next notation is "Upon Mr. Fallon's appearing a few minutes later, the examination was resumed as follows."

The four questions and answers theretofore put and given were then "read to Mr. Fallon." I may add that the very first thing (as the record shows) that Mr. Fallon did was to proclaim that "we refuse to answer," giving "the reason that it will tend to degrade or incriminate" (page 2).

* * * * * * *

This affidavit is, as I have said, a supplementary one based solely upon the record—upon matters of which Mr. Arndstein's counsel have had actual knowledge from the beginning. All of this testimony should have been before this court upon the appeal herein being specifically mentioned in Judge Manton's order denying the application for a writ of habeas corpus as among the papers upon which that order was made.

(Record on Appeal to this Court, page 64, fol. 98).

Judge Manton's order denying the application for a writ—being the order here appealed from—thus begins (fols. 98-99):

> "The bankrupt herein having made application for a writ of Habeas Corpus, now on reading and filing the petition for such writ duly verified by the bankrupt, and on reading the order made herein September 14th, 1920, denying the bankrupt's motion for a stay pending appeal from the order of Hon. A. N. Hand entered Septemb r 7th, 1920, *and the order entered September 15th, 1920, adjudging the bankrupt in contempt of court and directing his imprisonment, and all the papers upon which said orders were made and all the papers on which the said order was made, and on reading all of the papers and proceedings herein,* and after hearing William J. Fallon, Esq., and James W. Osborne, Esq., counsel for the bankrupt in support of the application for a writ of habeas corpus, and Saul S. Myers, Esq., counsel for Hon. Henry A. Gildersleeve, Trustee in Bankruptcy herein, in opposition, it is on motion of Saul S. Myers, attorney for the said Trustee,
>
> ORDERED that the said application be and the same hereby is in all respects denied."

Now, the very first among the "papers" upon which the "order adjudging the bankrupt in contempt of court and directing his imprisonment" was made is "the testimony of the bankrupt herein," taken September 14th, 1920 (Record on Appeal to this Court, fol. 91), and the order denying the application was, as we have just seen, put upon "ALL the papers" upon which this order adjudging

the bankrupt in contempt was itself made. Finally the order denying the application for a writ of habeas corpus was, as appears from the extract quoted above (Record on Appeal to this Court) made "on reading ALL of the papers and proceedings herein"—a phrase plainly broad enough to include all of the testimony of the bankrupt whenever given.

If this record had been submitted to me or to my counsel who argued the application below and all the orders preliminary to it, it, of course, would not have been certified without the inclusion of the bankrupt's testimony. While appellant's counsel thus had knowledge of all the matters in this affidavit contained—while indeed if they had not through inadvertent error omitted from the record Arndstein's testimony—all the matters in this affidavit would long ago have been before this court, I am perfectly willing to allow counsel for the appellant any reasonable time which this court may direct in which to answer this affidavit or the petition and affidavit of Mr. Myers to which this affdavit is supplementary, or the brief filed herein. My purpose in submitting the petition, affidavits, brief and record of Arndstein's testimony to the court at this time was to bring the whole matter of intervention and rehearing on at this Term of Court.

HENRY A. GILDERSLEEVE.

Sworn to before me, this
day of November, 1920.

A. MALES,
Notary Public,
Bronx County.

Supreme Court of the United States

OCTOBER TERM—1920.

No. 575.

JULES W. ARNDSTEIN,
Appellant,

vs.

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York.

BRIEF IN SUPPORT OF PETITION OF THE TRUSTEE IN BANKRUPTCY FOR LEAVE TO INTERVENE, FOR THE CERTIFICATION OF THE ENTIRE RECORD AND FOR A REARGUMENT.

SAUL S. MYERS,
Attorney for the Trustee.

FRANCIS M. SCOTT,
WALTER H. POLLAK,
SAUL S. MYERS,
Of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

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Supreme Court of the United States

OCTOBER TERM, 1920.

JULES W. ARNDSTEIN,
Appellant,
vs.
THOMAS D. MCCARTHY, United States Marshall for the Southern District of New York.

#575.

BRIEF IN SUPPORT OF PETITION OF THE TRUSTEE IN BANKRUPTCY FOR LEAVE TO INTERVENE, FOR THE CERTIFICATION OF THE ENTIRE RECORD AND FOR A REARGUMENT.

General Statement.

The trustee in bankruptcy asks leave to intervene in this proceeding, prays that the entire record be certified and petitions that upon that full record a re-argument may be had. The grounds upon which this application is made appear from the petition of the Honorable Henry A. Gildersleeve, the trustee.

verified on November 15th (Papers on Petition, page 15), and from the affidavit of Mr. Saul S. Myers, his attorney of record, verified the same day (Papers, pages 19-20). A supplementary affidavit of Judge Gildersleeve (verified November 20th) points out in detail the insufficiency of the record before this Court when it reversed the Court below; to the original typewritten copy of that affidavit is attached a copy of the stenographer's minutes of Arndstein's examination.

The record upon which this Court acted when it reversed the Court below was upon its face incomplete. Judge Manton's order denying the application for a writ of habeas corpus was by its own terms based in large part upon Arndstein's own testimony upon his examination. None of that testimony was included in the record upon which this Court ruled. The incompleteness of the record inevitably induced a misconception by this Court of the appellee's true contention. This misconception appears from the opinion of the Court itself. Mr. Justice McReynolds declared the issue to be whether or not the "schedules standing alone amounted to an admission of guilt." Upon a full record, the issue would have emerged as the very opposite of the issue this Court conceived it to be. Appellee's true contention is that the schedules and examination taken together, amounted not to an admission of guilt but to a denial of guilt. Having volunteered this denial—and having volunteered it in the light of the most explicit warning from both counsel and commissioner that he need not testify to incriminating matters—the bankrupt should have been subjected to the most rigorous examination with regard to his denial.

POINTS.

In detail the contentions of the trustee are the following:

I. The record upon which this Court acted, is upon its face incomplete: Papers—chief among them the bankrupt's own testimony—recited in the order of Judge Manton appealed from as the basis of his ruling are omitted from that record.

II. Upon a full record, appellee's contention would have emerged as the very opposite of that contention which this Court upon a fragmentary record conceived it to be. Appellee's true argument was not that the "schedule standing alone amounted to an admission of guilt"; appellee's argument as it would have been presented upon a full record was that the schedules and examination taken together amounted to a denial of guilt and that the bankrupt, having made his denial voluntarily, must submit to full examination with regard to it.

III. If the record had been complete the legal result upon the ap-

peal would, we submit, have been the opposite of the result in fact attained. For the Trustee's contention that examination was proper because both in his schedules and upon his examination the bankrupt had denied the concealment of assets, is a contention sustained by the unbroken current of authority in this Court.

IV. Taking the situation as a whole, the case is in its essence identical with ex parte Crenshaw (15 Pet., 119). In this case as in that an incomplete record induced an erroneous result; the mandate here issued should be revoked as the mandate there issued was revoked.

POINTS.

I.

The record upon which this Court acted is upon its face incomplete. Papers—chief among them the bankrupt's own testimony—recited in the very order of Judge Manton appealed from as the basis of his ruling are omitted from that record.

The trustee in bankruptcy and his counsel had no part in the preparation of the brief or the presenta-

tion of the argument upon the appeal herein. (Petition of Judge Gildersleeve, fols. 8-10.) We mention this not by way of criticism of the Solicitor General's presentation (see Judge Gildersleeve's own statement, fols. 21-22), but simply to explain the incompleteness of the record upon which that presentation was made (Petition, fols. 22-23). The learned counsel for the United States had no part in the argument below. As appears from all the orders in the record the arguments in opposition to Arndstein's contentions below were presented by counsel for the trustee (order denying application for writ of habeas corpus [fols. 98-99]; order adjudging bankrupt in contempt [fol. 91]; order directing the answering of questions [fol. 88]). Judge Gildersleeve in his petition points out (fol. 22) "that the record from which the Solicitor General argued was incomplete, inasmuch as that, among other things, there was not printed in the said record the testimony given by the appellant Arndstein before Special Commissioner Gilchrist in the bankruptcy proceeding, which testimony was recited in the order appealed from and the previous order of September 1, 1920, instructing the said Arndstein to answer questions." In his supplementary affidavit of November 20th, the omission is pointed out in detail. To that affidavit a copy of the examination is annexed.

The order appealed from denying the application for the writ of habeas corpus appears at page 64 of the record (fols. 98-99). Judge Manton made that order (fol. 98) "on reading and filing the petition for such writ duly verified by the bankrupt, and on reading the order made herein September 14, 1920, denying the bankrupt's motion for a stay pending

the appeal from the order of Hon. A. M. Hand, entered September 7, 1920, and the order entered September 15, 1920, adjudging the bankrupt in contempt of court and directing his imprisonment, and all the papers upon which the said orders were made, and on reading all of the papers and proceedings herein, and after hearing counsel for both sides." *Now the incompleteness of the record will appear from the merest examination of this order.* Thus the "order made herein September 14, 1920, denying the bankrupt's motion for a stay pending the appeal" does not appear in the record at all. There is no order denying a stay printed anywhere in the record, and the only order of September 14th (the one printed on page 61) is the order adjudging the bankrupt in contempt and itself referring (fol. 91) to "the order of Hon. M. T. Manton, dated September 14, 1920, denying a stay." We mention this omission of an order not as in itself important, but as showing that the record is *upon its face* incomplete; one of the documents specifically recited (fols. 98-99) in the order appealed from (fol. 100) is not printed at all.

Vitally important, however, is the omission of testimony of the bankrupt himself; for the trustee's contention that the appellant had waived his privilege against self-incrimination—and Judge Augustus Hand's decision that such was the case —was necessarily based upon that testimony. And upon that testimony, too, Judge Manton's order denying the writ of habeas corpus was not only necessarily—but was in terms—rested. We have already quoted Judge Manton's own statement of the papers and proceedings upon which his determination was based. Specifically

recited, it will be recalled (Record, fol. 98), was not only the order denying a stay, but also "the order entered September 15, 1920,* adjudging the bankrupt in contempt of court and directing his imprisonment" and *"all the papers upon which the said orders were made."* Now, the "order adjudging the bankrupt in contempt," is as we have said, printed on page 61. And the first of "the papers upon which the said order was made" is, as appears from that order itself (fol. 91), "the testimony of the bankrupt herein, taken September 14, 1920, before Commissioner Gilchrist" (Record, fol. 91).

Nor is this all. The record should have included not only Arndstein's testimony of September 14th, but every line and letter of his testimony whenever given. For Judge Manton's order denying the application for a writ of *habeas corpus*—the order appealed from—was by its own terms made not only upon "all the papers" upon which certain earlier orders were based. It was as well—and again by its own terms (fol. 98)—made "ON READING ALL OF THE PAPERS AND PROCEEDINGS HEREIN."

It might have been possible for this Court to affirm Judge Manton's order upon an incomplete record; for it was in the first instance the appellant's fault that the record was incomplete. But this Court cannot upon a self-evidently and vitally incomplete record reverse Judge Manton's order. (The proposition that the incompleteness of a record is properly shown upon a petition for rehearing is established by *Ex Parte Anderson Crenshaw*, 15 Pet., 119; *Security Mutual Life Ins. Co.* vs. *Prewitt*, 202 U. S., 246, 248).

*The reference to September 15th is apparently mistaken. The order adjudging the bankrupt in contempt is dated September 14th and is so referred to supra (page 56).

II.

Upon a full record appellee's contention would have emerged as the very opposite of that contention which this Court upon a fragmentary record conceived it to be. Appellee's argument was not that the "schedules standing alone amounted to an admission of guilt"; appellee's true argument as it would have been presented upon a full record was that the schedules and examination taken together amounted to a denial of guilt and that the bankrupt, having made his denial voluntarily, must submit to a full examination with regard to it.

The importance of all the foregoing is enormously enhanced when the record is viewed, not as we have heretofore viewed it, by its own light merely, but in the light of Mr. Justice McReynolds's opinion. Mr. Justice McReynolds thus stated what to his mind was the vital question and his ruling upon that question. "The writ was refused" the learned justice wrote "upon the theory that by filing schedules without objection the bankrupt waived his constitutional privilege and could not thereafter refuse to reply when questioned in respect of them. This view of the law, we think, is erroneous. The schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime, and the mere filing of them did not constitute a waiver of right to stop short when-

ever the bankrupt could fairly claim that to answer might tend to incriminate him." The issue, in other words, was in Justice McReynolds's mind, and upon the altogether incomplete record before him, whether the "schedules standing alone" did or did not "amount to an admission of guilt." We purpose by a short analysis, to show how completely the issues as they were presented in this Court were transformed—how vitally they were distorted—by reason of the inadequacy of the record which (without the knowledge of the trustee or his counsel [Petition of Judge Gildersleeve *passim;* affidavit of Myers]) was certified to this *Court* from the court below. For in the court below, as Judge Manton's own order shows, the issue was not with regard to the schedules "standing alone." It was at least as much with regard to the "testimony of the bankrupt taken herein."

Nor is this all. The omission of the bankrupt's examination not merely removed much of the foundation of appellee's argument here: that omission literally turned that argument upside down. The words of Mr. Justice McReynolds showed that this Court conceived the appellee as basing his argument upon the proposition that the schedules "amounted to an admission," amounted to "clear proof of guilt"; in fact, appellee's argument was precisely the opposite. The schedules and examination, appellee argued, amounted to a denial of guilt. And as that denial was made with full knowledge that the witness need answer no incriminating questions, the witness, by making it, subjected himself to the fullest cross examination (see *Powers* vs. *U. S.*, 223 U.

S., 303; *Camminetti* vs. *U. S.*, 242 U. S., 470, and other cases cited under Point III, infra).

What appellee's argument really was—what appellee's argument would have been here if the whole record had been certified and if the counsel who had handled this litigation throughout had had an opportunity, upon that whole record, to present their contentions—is made perfectly plain by consideration of the supplementary affidavit of Judge Gildersleeve, verified November 20, 1920, and the annexed testimony of Arndstein. That affidavit shows two things. (1) It shows, to begin with, that not merely in the schedules but upon his examination Arndstein sweepingly denied the possession or disposition of assets. "I never had any" stocks or bonds "in my life" said Mr. Arndstein. "I never owned a share of stock in my life. I never even saw a genuine certificate in my life. I never possessed any in my life, any negotiable stock." (Minutes of May 15, 1920, page 15.) Again "I never owned a share of stock; I never had a share of stock that was good to my knowledge in my life." (Ibid, page 34.) (See also Testimony of May 24, page 2360 and references in the testimony of September 14th to this earlier testimony (supplementary affidavit of Gildersleeve).

(2) *That affidavit shows further that the witness gave all of this testimony after being warned by the commissioner almost before he opened his mouth that he need not say anything which could incriminate him and that he was the judge of what did and did not incriminate him.* (Testimony of May 15th, page 3. See also supplementary affidavit of Gildersleeve.) The record is indeed as Judge Gildersleeve in his supplementary affidavit points

out, fairly shot through with references to self-incrimination, and with manifestations of Arndstein's zeal in invoking his constitutional rights. To all of which we may add that Mr. Arndstein not only had counsel to guide him through hundreds of pages of testimony but declined to answer the simplest questions—declined to give even a brief list of the names he had borne—without the advice of that counsel. (Testimony of May 15th, page 2.)

Now the Court will bear steadily in mind that the precise purpose of the questions which the witness declined to answer and which Judge Hand ordered him to answer, which Judge Manton held him in contempt for not answering, and to avoid answering which Arndstein sued out his writ of habeas corpus—was to show that the witness's denials that he possessed assets, disposed of assets or concealed assets were false. The general nature of the charges against Arndstein is not in doubt. The petition for involuntary bankruptcy (Record, fols. 9-10), shows that the National Surety Company, the petitioner, has sustained great losses through thefts committed upon "Members of the New York Stock Exchange, investment houses and banking institutions" whose employees had been "bonded by your petitioner by what are commonly known as Blanket Bonds." "These bonds are intended to insure such persons against loss by theft, etc." Nicholas Arndstein was, then, charged with being the guiding spirit—the master mind—in a series of gigantic thefts. These thefts were thefts of securities. The witness Gluck testified to stolen securities in staggering amounts which he says he turned over to Arndstein—100 shares of American Beet Sugar, 100

shares of American Car Foundry, 100 shares of American Smelting & Refining, preferred, 100 shares of American Smelting & Refining, common, 70 shares of Baldwin Locomotive, 200 shares of Crucible Steel, 200 shares of Denver & Rio Grande Railroad preferred, 100 shares of Endicott-Johnson, 300 shares of Goodrich, 100 shares of Guffey Gillespie Oil Company, 100 shares of International Mercantile Marine, preferred, 400 shares of Mexican Petroleum, 200 shares of Ohio City Gas Company, 320 shares of Pennsylvania Railroad, 100 shares of Pond Creek, 100 shares of Republic Iron & Steel, 50 shares of Reynolds Tobacco Company, 300 shares of St. Louis and San Francisco Railroad, 100 shares of Studebaker, 200 shares of Texas Company, preferred, 600 shares of Union Pacific, 100 shares of United Retail Stores, common, 100 shares of Wheeling & Lake Erie, 100 shares of Worthington Pump, and bonds of Iowa Central Railroad and Wilson & Company (Record, pages 9 to 17, fols. 17 to 25, quoting testimony of Gluck in support of application to compel answers). All of these, Gluck says, he turned over to Arndstein and to another confederate, Cohen, in October and November, 1919 (Ibid, page 17, fol. 25). All of these charges Arndstein meets, as we have seen, with a blank denial. And then when an elaborate series of questions is put to him seeking to bring out the falsity of these denials, he declines to answer these questions. Take for instance the following questions 50-62 (Record, page 21), all taken from Schedule "C"—a schedule of questions put by counsel for the trustee which the bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him (page 19, fol. 13).

50. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control? (Showing witness a list marked for identification of May 15th, 1920.)

51. Did you ever see any stocks or bonds during the past year, anywhere?

52. Did you touch any stocks or bonds any time, or place, within the past year?

53. Did you buy or sell any shares of stock or bonds at any time during the past year?

54. Do you say that you never had in your possession or under your control, a single share of stock or bond mentioned in this list Exhibit 1 for identification of this date?

55. Well, do you say that you never saw those securities?

56. You say you never touched them?

57. Did you ever see them in anyone else's possession?

58. Did you ever go to Washington with Nick Cohen?

59. Did you ever meet Nick Cohen in Washington?

60. Have you invested any money anywhere in the past year?

61. Have you handled any moneys since Lincoln's Birthday this year?

62. Have you had any property in your possession anywhere since Washington's Birthday this year?

Mr. Justice McReynolds, as we have said, held that the propriety of these questions must be dedetermined in the light of the "schedules standing alone." Indeed, upon the record before him he

could have held no otherwise; for that record did not contain the examination. The schedules, Mr. Justice Mc[illegible]nolds held, thus "standing alone" did not "amount to an admission of guilt or furnish clear proof of crime." He did not pass upon, we repeat, and could not pass upon the contention that the examination with the schedules furnished a clear denial of guilt—and a denial which opened the door to the very examination which commissioner, trustee, and counsel desired.

It is unnecessary for the purpose of this argument—an argument which simply asks leave of the court to hear the trustee's contentions, not now to judge them—for us to go ahead and show that if these contentions had been presented upon a full record, the result must have been different from the result to which this court came. The demonstration is, however, not difficult, and while unnecessary cannot be altogether superfluous.

III.

If the record had been complete the legal result upon the appeal would, we submit, have been the opposite of the result in fact attained. For the Trustee's contention that cross examination was proper because both in his schedules and upon his examination the bankrupt had denied the concealment of assets, is a contention sustained by the unbroken current of authority in this Court.

We have said that if the record had been full and had presented appellee's true contention, the legal

result of the appeal would have been the opposite of the result actually attained. We may at once explain that upon the incomplete record in fact presented and with the contention of the appellee as this court upon that record defined it, the result reached was an almost inevitable result. For the critical inquiry, we repeat, was in Justice McReynolds's own language whether "the schedules standing alone" did or did not "amount to an admission of guilt or furnish clear proof of crime," and whether "the mere filing of them did not constitute a waiver of right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him."

Now the schedules manifestly did not furnish *any* proof of crime. The federal crime involved—and no other was at issue (*Hale* vs. *Henkel*, 201 U. S., 43)—was, of course, the concealment of assets. And the schedules not only contain no admission of the concealment; they constitute the most explicit denial of concealment. The only asset he had in the world, Arndstein asserts, was an $18,000 bank deposit. His securities were "none." (Schedules, Record, pages 48, 55.)

Now let us suppose the record had been a full one and the question before the court the true question. The issue would then have been, as we have said, whether the examination and the schedules taken together constituted a denial of crime which opened the door to examination with regard to the crime. In that record—upon an opposite issue—the schedules would, of course, have had an opposite significance. Being denials of concealment they inevitably defeated the contention which this court upon an incomplete record thought was in-

volved—the contention namely: that there had been an admission of concealment (See IV, *Wigmore*, Sec. 2276, Note 2 and cases cited). But being denials which themselves reiterated the more explicit denials contained in the examination, the denials would have reinforced a contention that just because Arndstein had denied his concealment, he might be cross-examined with regard to it. The legal principle upon which appellee's true contention upon a full record would have been rested is not in doubt. A witness may if he chooses refuse to testify at all with regard to incriminating matters. But if he does testify he must submit to the most rigorous cross-examination upon these matters. At once the clearest and most familiar illustration is supplied by decisions upon the position of a defendant in a criminal case. He may, of course, refuse to take the stand altogether; he has not merely a privilege against testifying to incriminating matter, a privilege which according to the construction which this court has given to the Fifth Amendment, protects any witness whether or not a party in any litigation, civil or criminal (*Counselman* vs. *Hitchcock*, 142 U. S., 547; *Boyd* vs. *United States*, 116 U. S., 616); he has as well a privilege against testifying at all in the proceeding against him. And the fact of his failure to testify is in no way to prejudice his cause. But if he does testify he can be cross-examined with regard to every statement that he makes.

Fitzpatrick vs. *United States*, 178 U. S., 304, 315;

Sawyer vs. *United States*, 202 U. S., 151, 165;

Powers vs. *United States*, 223 U. S., 303, 314-315;
Camminetti vs. *United States*, 242 U. S., 470-495.

See, also,

Regan vs. *United States*, 157 U. S., 301, 305;
Spies vs. *Illinois*, 123 U. S., 131, 181;
United States vs. *Mullaney*, 32 Fed., 370 (an early and clear statement by Judge Brewer);
United States vs. *Oppenheim*, 228 Fed., 220, 232.

It is hardly necessary to say that the application of these cases is most cogent to a situation like the present one where the witness was represented by counsel and perfectly understood his right to avoid self-incrimination. (See the monumental opinion in *United States* vs. *Kimball*, 117 Fed., 156, 159, a case cited with approval in *Hale* vs. *Henkel*, 201 U. S., 43, 63; see also *Knoell* vs. *United States*, 239 Fed., 16, 21.)

Upon the true issue that would have been presented upon a full record, the schedules would, in deed, have had a very special significance. For these schedules were voluntary statements of Arndstein's. (The declaration to the contrary on page 2 of appellant's brief—a declaration nowhere challenged in the appellee's brief—is entirely erroneous.) Arndstein did not file his schedules pursuant to any order of court. Even the fragmentary record before this court shows that. The order adjudg-

ing him a bankrupt, an order entered upon his default, did, indeed, direct "the said bankrupt" to "file schedules in triplicate as required by law within ten days from the date hereof" (Record, page 6, fol. 11). But the "date hereof"—the date when that order was filed is "Mar. 4, 1920" (page 7). And Arndstein verified his schedule only on June 10 (Record, page 54)—not ten but one hundred days "from the date hereof." And the record shows more than this—more and worse. At pages 37-38 we find Arndstein cooly flouting Judge Hand's order requiring him to file schedules. Asked whether he had prepared any list of his assets and liabilities he said, "I have not prepared anything, sir, at no time." He was *not* "at work" preparing them; he had made no effort to prepare any schedules. And this was May 24th—two and a half months after he had been ordered to do so in an adjudication of bankruptcy, an adjudication of which he must have learned about the day it was rendered. For Arndstein himself swears that he read it in the newspapers (page 37).

"The schedule" was then not merely "a representation that the property set forth was all the property known to the bankrupt" to quote a particularly clear statement of Mr. Justice Holmes sitting in circuit (*Johnson* vs. *United States*, 163 Fed., 30, 33); it was the bankrupt's own voluntary representation that such was the fact. It was not merely "as if the bankrupt had sworn on the examination itself: 'I have no property except Whiteacre.'" (*In re Tobias*, 215 Fed., 815); it was a perfectly gratuitous statement by the bankrupt that he had no property except the bank ac-

count, and a statement made long after the witness had been warned that he need not touch upon incriminating matters, and that he was the judge of what did incriminate (supplementary affidavit of Gildersleeve, quoting minutes of hearing May 15, 1920, page 3). The schedule was, in the own language of Arndstein under oath, "a statement" made by him after being "first duly sworn" of "all his estate, both real and personal in accordance with the acts of Congress relating to bankruptcy" (Record, page 52). And the schedule, finally, was a statement in whose preparation we may safely assume the bankrupt was assisted throughout by the able counsel without whose guidance Arndstein was unwilling to answer the simplest question. "Presumably" the schedule was "prepared at leisure and scrutinized by the bankrupt with care before he verified it" (*Ensign* vs. *Pennsylvania*, 227 U. S., 592, 599).

It is, of course, no possible answer to the foregoing argument—an argument directed to showing that upon a full record appellee's contention must have been recognized as the very opposite of the contention which this court conceived it to be, and the result attained must have been an opposite result—to say that the rules that the privilege may be lost through the admission of incriminating facts and through the denial of incriminating facts have a common foundation. Probably they *have* a common foundation; each proceeds upon the principle that a witness who willingly testifies one way or the other about incriminating matters is not "compelled" to do so (*United States* vs. *Kimball*, 117 Fed., 156, 163, an opinion cited with approval in *Hale* vs. *Henkel*, 201 U. S., 43, 63). Each, again,

has its practical basis in the principle that "the privilege is to suppress, not to pervert the truth" (*In re Tobias,* 215 Fed., 815, 816, the leading case for the proposition that a bankrupt who has filed schedules may be examined with regard to them). The witness may refuse to tell his story at all, but he may not tell half his story—he may not under the cloak of a public privilege tell those half-truths which are the most dangerous falsehoods. But while the bases, theoretical and practical, of the two rules are related, the applications of the rules to any given situation are manifestly contradictory. The two rules start, indeed, from a common point, but they proceed in an opposite direction. (Compare *Brown* vs. *Walker,* 161 U. S., 591, 597-598, stating the two rules in successive paragraphs.)*

*The conclusion that the full record must be certified and reargument upon that record allowed would have followed, even if the contention of the appellee had been what the Court upon an incomplete record thought that contention to be. For without the examination it is as clearly impossible to tell how far Arndstein went in his examination towards admitting his guilt as it is to tell without that examination how sweeping were his denials. The Court manifestly could not tell whether or not Arndstein had made "an admission of guilt" or had "furnished clear proof of crime" without the record. "The only inquiry," as Mr. Wigmore (Vol. 4, Sec. 2276) points out, "can be whether by answering as to fact X" the witness has waived his privilege "for fact Y. If the two are "related facts, parts of a whole fact forming a single relevant "topic, then his waiver as to part is a waiver as to the re "maining parts; because the privilege exists for the sake of "the criminating fact as a whole." (See also the leading case of *Foster* vs. *People,* 18 Mich., 266, quoted in Mr. Wigmore's discussion and in Mr. Justice McReynolds' opinion.) Manifestly the Court cannot embark upon this inquiry without knowing how the witness has answered "as to fact X."

IV.

Taking the situation as a whole, the case in its essence is identical with EX PARTE CRENSHAW (15 Pet., 119): In this case, as in that case, an incomplete record induced an erroneous result; the mandate here issued should be revoked as the mandate in that case was revoked.

Our argument has, we believe, proceeded further than the necessities of the case. It is sufficient, we repeat, for the purposes of the present application to show that the record was incomplete. It is unnecessary to demonstrate, as we have tried to do, that upon a full record and with an opposite contention on the part of the appellee there must have been a different result. The plain truth, of course, is that an appellate court cannot in justice either to litigants or to the court below reverse upon an incomplete record. Peculiarly is this the case where the party primarily interested was deprived of representation by the counsel who had handled an immense litigation in all its previous stages. (See for the significance of the appellee's absence *Ex Parte Anderson Crenshaw,* 15 Pet., 119); and for the significance of the record's incompleteness the same case, and also *Security Mutual Life Ins. Co.* vs. *Prewitt,* 202 U. S., 246, 248).

We may be permitted in conclusion a word with regard to what we may call the public aspects of the present application. The rule that a bankrupt who has testified in examination or schedules one way or the other with regard to incriminating facts

is—or until this Court spoke was—fortified by abundant authority (*In re Tobias,* 215 Fed., 815; *In re Bendheim,* 180 Fed., 918; *In re Walsh,* 104 Fed., 518, 520). The conflict between a bankrupt's obligation to reveal his property and the right of all men under the common law and under the Constitution not to be *forced* to incriminate themselves is an historic conflict. *Any* case that bears upon this conflict is an important case to the public. But particularly is this case an important one to the public. For the instant bankruptcy involves, according to the charges of the petitioner, one of the greatest and one of the gravest series of frauds and crimes ever brought to the attention of the bankruptcy courts or of any court.

It is the right of every litigant in every court to have his cause determined upon a full record, a record which presents his true contention. Particularly is it the right of an appellee in a court of last resort. Most particularly is it the right of the appellee in this court and in this case. For the true appellee is a public officer discharging a public trust. And the issues he submits for adjudication are in the fullest sense—alike in the facts upon which they arise and in the problems of law they present—public issues.

The petition for the certification of the record, for rehearing, and other relief, should be granted, and the mandate revoked.

Respectfully submitted,

SAUL S. MYERS,
Attorney for the Trustee.

FRANCIS M. SCOTT,
WALTER H. POLLAK,
SAUL S. MYERS,
of Counsel.

ARNDSTEIN *v.* McCARTHY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 575. Argued October 21, 22, 1920.—Decided November 8, 1920.

Under direction of the bankruptcy court, but without objection, an involuntary bankrupt filed schedules of assets and liabilities, which, standing alone, did not amount to an admission of guilt or furnish clear proof of crime; and, later in the proceeding, he declined to answer certain questions concerning them on the ground that to do so might incriminate him. *Held*, that by filing the schedules he did not waive his privilege under the Fifth Amendment. P. 72.

The privilege of the Amendment applies if it cannot be said that the questions propounded, considered in the light of the circumstances disclosed, may be answered with entire impunity. *Id.*

The provision of § 7 of the Bankruptcy Act that no testimony given by a bankrupt shall be offered in evidence against him in any criminal proceeding, is not a substitute for the protection of the Fifth Amendment, since it does not prevent the use of his testimony to search out other evidence to be used in evidence against him or his property. P. 73.

Reversed.

THE case is stated in the opinion. See also, *post*, 379.

Mr. Rufus S. Day and *Mr. William J. Fallon*, with whom *Mr. George L. Boyle* was on the brief, for appellant.

The Solicitor General for appellee.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Holding that the petition failed to disclose adequate grounds therefor, the court below denied appellant's

application for a writ of habeas corpus, through which he sought release from confinement for contempt. The cause is here by reason of the constitutional question involved.

The petition alleges:

That having been adjudged an involuntary bankrupt, Arndstein was called before Special Commissioners for examination under § 21-a, Bankruptcy Act. He refused to answer a long list of questions, claiming that to do so might tend to degrade and incriminate him. The District Judge upheld this contention and denied a motion to punish for contempt.

That subsequent to such examination and under the direction of the court the bankrupt filed schedules under oath which purported to show his assets and liabilities. When interrogated concerning these he set up his constitutional privilege and refused to answer many questions which are set out. Thereupon he was committed to jail.

The writ was refused upon the theory that by filing schedules without objection the bankrupt waived his constitutional privilege and could not thereafter refuse to reply when questioned in respect of them. This view of the law we think is erroneous. The schedules standing alone did not amount to an admission of guilt or furnish clear proof of crime and the mere filing of them did not constitute a waiver of the right to stop short whenever the bankrupt could fairly claim that to answer might tend to incriminate him. See *Brown* v. *Walker*, 161 U. S. 591, 597; *Foster* v. *People*, 18 Michigan, 266, 274; *People* v. *Forbes*, 143 N. Y. 219, 230; *Regina* v. *Garbett*, 2 C. & K. 474, 495. It is impossible to say from mere consideration of the questions propounded, in the light of the circumstances disclosed, that they could have been answered with entire impunity. The writ should have issued.

"No person . . . shall be compelled in any criminal case to be a witness against himself,"—Fifth Amendment. "This provision must have a broad construction

in favor of the right which it was intended to secure." "The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime." *Counselman* v. *Hitchcock*, 142 U. S. 547, 562.

The protection of the Constitution was not removed by the provision in § 7 of the Bankruptcy Act,—"No testimony given by him shall be offered in evidence against him in any criminal proceeding." "It could not and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property." *Counselman* v. *Hitchcock*, p. 564.

The judgment below must be reversed, and the cause remanded for further proceedings in conformity with this opinion.

MR. JUSTICE DAY took no part in the consideration or decision of this cause.